TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 361.

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA AND ELIAS S. A. DE LIMA, FRANCISCO DE P. CARDONA, ET AL., APPELLANTS,

vs.

DEUTSCHE BANK, THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, TREASURER OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 7, 1922.

(29,671)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1923.

Court of Appeals of the District of Columbia.

No. 3838.

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA, et al.,
Appellants,

vs.

DEUTSCHE BANK, etc., et al.

---

a Supreme Court of the District of Columbia.

In Equity.

No. 39726.

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA and ELIAS S. A. de Lima, Francisco de P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, Plaintiffs,

vs.

DEUTSCHE BANK, a Corporation; THOMAS W. MILLER, Alien Property Custodian, and Frank White, Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Original Bill of Complaint.*

Filed January 6, 1922.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

In Equity.

No. 39726.

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA and ELIAS S. A. de Lima, Francisco de P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, Plaintiffs,

vs.

DEUTSCHE BANK, a Corporation; THOMAS W. MILLER, Alien Property Custodian, Frank White, Treasurer of the United States, Defendants.

To the Supreme Court of the District of Columbia Holding an Equity Court:

The plaintiffs The Banco Mexicana De Commercio e Industria, Elias S. A. de Lima, Francisco de P. Cardona and Edwin J. Parkinson, by Cadwalader, Wickersham and Taft, their attorneys, bring this suit in equity pursuant to the provisions of Section 9 of an act of Congress of the United States, entitled "An Act to Define, Regulate and Punish Trading with the Enemy, and for Other Purposes, approved October 6, 1917," as amended by an Act of Congress to amend Section 9 of said Act, which amending Act was approved June 5, 1920 (said acts being hereinafter referred to as the "Trading with the Enemy Act"), and aver as follows:

1. The plaintiff the Banco Mexicano De Commercio e Industria (hereinafter called "Banco Mexicano"), is a corporation or-
2 ganized and existing under the laws of the Republic of Mexico, for the purpose of conducting a banking business, and has its principal place of business in the City of Mexico in the Republic of Mexico; the plaintiffs Elias S. A. de Lima and Edwin J. Parkinson are citizens of the United States, temporarily residing in the City of Mexico, in the Republic of Mexico, and the plaintiff Francisco de P. Cardona is a citizen of said Republic of Mexico, residing in said City of Mexico, and the said Elias S. A. de Lima, Francisco de P. Cardona and Edwin J. Parkinson are liquidators of said Banco Mexicano, as hereinafter set forth and bring this suit as such liquidators; that all of the plaintiffs are of full age.

2. The defendant the Deutsche Bank is a corporation duly incorporated under the laws of the former Empire of Germany, for the purpose of carrying on a banking business, and has its principal place of business in the City of Berlin in the Republic of Germany;

the defendants Thomas W. Miller, Alien Property Custodian and Frank White, Treasurer of the United States, are sued in their official capacity as such and are residents of the District of Columbia.

3. The plaintiffs aver, on information and belief, that pursuant to the Concession or Articles of Incorporation granted to said Banco Mexicano by the Government of the Republic of Mexico and in accordance with the so-called statutes or by-laws of said corporation and with the law of the Republic of Mexico relating to corporations and banks and the liquidation thereof, particularly Sections 206, 216 and 217 of the Commercial Code of said Republic, the directors and stockholders of said Banco Mexicano, at meetings duly
3 called and held in April, 1915, determined to liquidate the affairs of said Banco Mexicano, and at a meeting held on the 22nd day of April, 1915, said stockholders, pursuant to the law of the Republic of Mexico and the Articles of Incorporation and By-Laws of said Banco Mexicano, in such case made and provided, duly appointed as liquidator for that purpose the Deutsche Bank of Berlin, and authorized it to act in the process of liquidating the said bank, through Elias S. A. de Lima and Carlos Schulze, as its representatives; and that upon their said appointment, said de Lima and Schulze, acting as liquidators, proceeded with the liquidation of the affairs of said Banco Mexicano, taking possession of its assets and continuing to manage its business and affairs in liquidation until July 23, 1919, when the said stockholders at a meeting called and held on said last named day, pursuant to said law of the Republic of Mexico and said Articles of Incorporation and By-Laws, appointed as such liquidators the plaintiffs herein, Elias S. A. de Lima and Edwin J. Parkinson and Francisco de P. Cardona, who having duly qualified as such liquidators have ever since continued to act as such, taking and ever since retaining possession of the assets and managing the affairs of said Banco Mexicano.

4. By virtue of their said appointment as liquidators and under the provisions of said law of the Republic of Mexico, as the plaintiffs are informed and believe, the said Deutsche Bank, and the said Elias S. A. de Lima and Carlos Schulze, representing it and the said de Lima, Parkinson and Cardona, during the periods respectively that they were acting as such liquidators as aforesaid, were
4 duly authorized to make loans of assets of said Banco Mexicano for its account and to collect, and, if necessary, to sue for and recover in the name and behalf of the said Banco Mexicano, all debts and claims of every kind whatsoever owing or belonging to said Bank or on its account, and particularly to sue for and collect upon the claim which is the subject of this action. The principal offices of said Banco Mexicano and of said liquidators, the plaintiffs, are in the City of Mexico, Republic of Mexico, at 2-a Calle de Capuchinas Nos. 46 y 48.

5. On or about December 15, 1916, as the plaintiffs are informed and believe, the said de Lima and Schulze, acting as and in behalf of the said liquidators and for the account of said Banco Mexicano, made a loan of 500,000 gold dollars, in New York City, to the Deutsche Bank of Berlin, a banking corporation organized and

existing under the law of the German Expire, for six months, with interest at 5% per annum. The said loan was made by paying the amount thereof to Hugo Schmidt, the agent of the defendant Deutsche Bank, in New York City, where the said Deutsche Bank maintained an office for the transaction of the banking business in the United States, on or about said December 15, 1916, and the Deutsche Bank agreed to repay same in said City in gold dollars on June 15, 1917, with interest on said principal amount at the rate above mentioned. Upon receiving said amount the said Deutsche Bank forthwith deposited the same with the Guaranty Trust Company of New York, to the credit of its general bank account which it then had with that institution.

6. On April 6, 1917, war was declared between the United States and Germany. Thereafter, as the plaintiffs are informed
5 and believe, under the provisions of the said Trading with the Enemy Act and other statutes in such case made and provided, all moneys, securities and property owned by the defendant Deutsche Bank in the United States or held for it by others was turned over to or seized by the then Alien Property Custodian of the United States and have ever since been held by him.

7. The plaintiffs aver on information and belief that the 500,000 United States gold dollars loaned as aforesaid to the defendant Deutsche Bank were never transferred from the United States physically or otherwise, but constituted a part of the balance of the general deposits and securities and other property in the United States of the Deutsche Bank which were taken over and seized by the then Alien Property Custodian. The total amount of such balance and the total value of the securities and other property so taken over by the Alien Property Custodian are unknown to the plaintiffs, but they are sufficient, as the plaintiffs are informed and believe, after the payment or satisfaction of all other claims and demands, if any, to which they may be lawfully applied, fully to pay, satisfy and discharge the claim and demand of the plaintiffs arising upon said loan.

8. The plaintiffs aver, on information and belief, that the Deutsche Bank after said loan was made to it on or about December 15, 1916 and until its said balance, securities and other property were turned over to the Alien Property Custodian as above set forth, continuously kept in the United States sufficient funds and property over and above what was necessary to pay and discharge all other claims and debts of every kind, to repay said loan in American gold
6 dollars with interest at the rate of 5%, from December 15, 1916, and said funds and securities were kept in the United States for the express purpose and with the intention by the use thereof, of repaying the said loan when same fell due. And the Deutsche Bank would, in the ordinary and usual course of business which it was then carrying on in this country and particularly in the City of New York, have so repaid the same when the debt fell due, if war had not intervened between the United States and Germany.

9. On June 15, 1917, there became due and owing to the plaintiffs from the defendant Deutsche Bank the sum of $500,000 United States gold, with interest at 5% from December 15, 1916, which sum is still due and owing but remains unpaid, although the plaintiffs have made demand for payment of the same upon the Deutsche Bank and the Alien Property Custodian.

10. Pursuant to the provisions of Section 9 of the said "Trading with the Enemy Act," the plaintiffs as liquidators as aforesaid, and in behalf of said Banco Mexicano, on or about May 27, 1920, duly filed with the Alien Property Custodian a notice of claim under oath and in such form and containing such particulars as was required by said Section 9 of said Act and as said Custodian had prescribed, in which said notice plaintiffs demanded payment to them of the debt above described with interest thereon then accrued by the Alien Property Custodian from the money or other property belonging to the defendant Deutsche Bank which had been conveyed, transferred, assigned, delivered or paid to said Alien Property Custodian or seized by him under the "Trading with the Enemy Act" or held by him or by the Treasurer of the United States
7 under said act.

That plaintiffs furthermore, on or about the same day, and pursuant to the provisions of said act, filed a similar application to the President of the United States for the payment of said debt with interest then accrued thereon.

11. Neither the President of the United States nor the Alien Property Custodian has, since the filing of such application, ordered the payment, conveyance, transfer, assignment or delivery to the plaintiffs of the money or property so held by the Alien Property Custodian or by the Treasurer of the United States, in payment or satisfaction of the claim of the plaintiffs above set forth, and no part of said debt or the interest thereon has been paid.

12. The plaintiffs bring this suit to establish the interest, right, title or debt claimed by the plaintiffs and to obtain the order of the Court for the payment, conveyance, transfer, assignment or delivery to the plaintiffs, of the money, to-wit, $500,000, so held by the Custodian or by the Treasurer of the United States, with interest accrued thereon from December 15, 1916, to June 15, 1917, at the rate of 5% per annum and thereafter to date of payment at the rate of 6% per annum.

13. The plaintiffs aver that on or about the 15th day of June, 1920, they duly filed with the Alien Property Custodian an agreement duly executed by the Deutsche Bank and dated the 20th day of May, 1920, by which it consented to the allowance of the claim of the plaintiffs hereinbefore set forth and agreed that an order should be made by the Attorney General exercising the authority of
8 the President for the payment by the said Custodian to the said liquidators of said debt, with interest, out of the funds and such other securities seized by the Custodian as formerly belonged to the Deutsche Bank, and were held by said Custodian or by the Treasurer of the United States.

14. The plaintiffs aver, on information and belief, that the Deutsche Bank at all times since December 15, 1916, kept in the United States sufficient cash and marketable securities, over and above its obligations, to enable it to pay said loan and interest, and they further aver that the Alien Property Custodian and the Treasurer of the United States now hold sufficient cash and marketable securities formerly owned by the Deutsche Bank and seized by the Custodian pursuant to the "Trading with the Enemy Act" over and above all claims against the same, to pay the said debt with interest.

15. The plaintiffs aver, on information and belief, that the said loan was made by them to the Deutsche Bank in New York by the delivery of a check drawn to the order of Hugo Schmidt, the duly authorized agent of said Deutsche Bank, on the Empire Trust Company for $500,000. This check was deposited by the said Schmidt with the Guaranty Trust Company to the credit of the Deutsche Bank and was duly paid. The agreement to repay the loan above set forth was made in New York City and such repayment was by such agreement to be made in New York in gold dollars, currency of the United States.

16. The plaintiffs are advised and believe that under the law of New York State and in the event of default by the Deutsche Bank in the payment of said loan they would have had on June 15,
9 1917, and ever since, and they now have a cause of action against the said defendant Deutsche Bank on which they could have sued and can now sue in the courts of general jurisdiction in the State of New York for the recovery of said debt and interest thereon; and that upon the commencement of such suit the plaintiffs could have procured and can now procure the issuance of a writ of attachment under which the funds and securities of the Deutsche Bank in New York City could have been and now can be levied upon and seized and applied in satisfaction of a judgment obtained by the plaintiffs for the recovery of said loan and interest. If said funds and securities should be, pursuant to Act of Congress or by the executive act of the Alien Property Custodian or by the Treasurer of the United States, or in any other way released or delivered in this country to the Deutsche Bank they could under the law of the State of New York, be immediately attached and a lien perfected as security for a judgment for the said indebtedness of the Deutsche Bank. The funds and securities aforesaid were taken over by the Custodian under the "Trading with the Enemy Act" and are now held by the defendant Thomas W. Miller, as Alien Property Custodian, or by the defendant Frank White, Treasurer of the United States. The plaintiffs aver that by reason of the foregoing facts, the debt to the plaintiffs arose with reference to the money and other property held by the Alien Property Custodian or the Treasurer of the United States within the meaning and intent of subdivision (*e*) of Section 9 of the "Trading with the Enemy Act."

Wherefore the premises considered the plaintiffs pray:

10 1. That process may issue out of this Court and be served upon the defendants the Deutsche Bank, Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United

States, requiring them to appear herein and answer the exigencies of this bill of complaint.

2. That the right, title, interest or debt claimed as aforesaid by the plaintiffs be established by the decree of this Court and that this Court adjudge, order and decree that the defendants Thomas W. Miller, as Alien Property Custodian, or Frank White, Treasurer of the United States, having custody and possession of said property and funds of the said defendant Deutsche Bank, do forthwith therefrom pay, transfer and deliver to the plaintiffs the full sum of Five hundred thousand ($500,000.00) Dollars, with interest thereon from December 15, 1916, to June 15, 1917, at the rate of five (5) per centum per annum and thereafter to the date of payment at the rate of six (6) per centum per annum, together with costs.

3. That the plaintiff may have such other and further relief in the premises as the nature of the case may require and to the Court may seem proper.

The defendants to this bill are:
Deutsche Bank,
Thomas W. Miller, Alien Property Custodian, and
Frank White, Treasurer of the United States.

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA,
ELIAS S. A. DE LIMA, AND
EDWIN J. PARKINSON,
As Liquidators of said The Banco Mexicano De Commercio e Industria,
By CADWALADER, WICKERSHAM & TAFT,
Their Attorneys.

CADWALADER, WICKERSHAM & TAFT,
40 Wall Street, New York City;
CHARLES HENRY BUTLER,
JOHN A. KRATZ,
1537 Eye Street, Washington, D. C.,
Attorneys for Plaintiffs.

11 STATE OF NEW YORK,
City of New York, To wit:

I, Henry W. Taft, being first duly sworn on oath depose and say; that I am one of the attorneys for the plaintiffs named in the above entitled bill of complaint and that I have read the foregoing bill of complaint subscribed in their name by me as their attorney, and know the contents thereof; that the facts therein stated of my own knowledge are true and the facts therein stated on information and belief I believe to be true.

HENRY W. TAFT.

Subscribed and sworn to before me this 5th day of January A. D., 1922.

[SEAL.] FREDERICK T. FROST,
Notary Public.

Notary Public, Kings County No. 84.
Kings County Register's No. 2083.
Certificate filed in New York County No. 204.
New York County Register's No. 2174.
Certificate filed in Bronx County No. 7.
Bronx County Register's No. 2238.

Motion to Dismiss.

Filed January 16, 1922.

* * * * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint, and for their separate and several grounds for the said motion assign the following:

12

(1) That it appears affirmatively from the allegations of the bill of complaint that the plaintiffs herein are claimants other than citizens of the United States, and that the debt which the plaintiffs are seeking to recover did not arise with reference to any money or other property held by the Alien Property Custodian or the Treasurer of the United States under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended;

(2) That the plaintiffs herein have not set forth facts sufficient to entitle them to equitable relief under Section 9 of the Trading with the Enemy Act as amended.

Wherefore these defendants pray that they be dismissed with their costs in this behalf expended, and for such other and further relief to which in the premises they may be justly entitled.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the U. S.

Answer of the Defendant Deutsche Bank.

Filed February 25, 1922.

* * * * * * *

To the Supreme Court of the District of Columbia, holding an Equity Court:

The defendant, Deutsche Bank, for answer to the original bill of complaint states to the Court as follows:

1. This defendant admits the allegations of said original
13 bill of complaint, and each and every averment thereof, to be true.

2. This defendant consents to the granting to the plaintiffs by the Court of the relief prayed for in said original bill of complaint.

And having fully answered, etc.

DEUTSCHE BANK,
A Corporation,
By HARRY A. FELLOWS,
Attorney.

HARRY A. FELLOWS,
Attorney for said Defendant.

DISTRICT OF COLUMBIA, *To wit:*

I, Harry A. Fellows, being first duly sworn, on oath say that I am the attorney for the above mentioned defendant, Deutsche Bank, whose name I have signed to the foregoing answer; that I know the contents thereof: that the facts therein stated of my own knowledge are true, and the facts therein stated on information and belief, I believe to be true.

HARRY A. FELLOWS.

Subscribed and sworn to before me this 24th day of February, 1922.

[SEAL.] C. E. KIBBEY,
Notary Public.

My Commission Expires: Jan. 7, 1924.

14 *Memorandum of Justice Hoehling.*

Filed May 18, 1922.

* * * * * * *

This is a suit brought by the Banco Mexicana and its liquidators against the Alien Property Custodian and others, to recover the sum of $500,000, with interest at 5% from December 15, 1916, to June 15, 1917, and, thereafter, at 6% until paid; being the amount of a

loan alleged to have been made by said bank to the Deutsche Bank of Berlin, Germany, (also named as party defendant,) the proceeds whereof were deposited, by the New York agent of the latter, to the credit of its general bank account with the Guaranty Trust Company of New York.

It is alleged that, subsequent to April 6, 1917, and under the provisions of the Trading with the Enemy Act, all moneys, securities and property owned by said Deutsche Bank in the United States, or held for it by others, were turned over to or seized by the Alien Property Custodian of the United States, and have ever since been held by him. It is further alleged that the $500,000 so loaned, as above, was never transferred from the United States, physically or otherwise, but constituted a part of the balance of the general deposits and securities and other property in the United States of the Deutsche Bank which were taken over and seized by the Alien Property Custodian; and, further, that the total amount of such balance and the total value of such securities and other property so taken over, while unknown to plaintiffs, are sufficient, after the payment and satisfaction of all other lawful payments and demands, if any, fully to pay, satisfy and discharge plaintiffs' claims and
15 demands herein. It is further alleged that, after the loan aforesaid, the Deutsche Bank continuously kept in the United States, until the action of the Alien Property Custodian aforesaid, sufficient funds and property over and above what was necessary to pay and discharge all other claims and debts of whatever kind, to repay the above loan in American gold dollars with interest at the agreed rate of 5% from December 15, 1916, and that said funds and securities were kept in the United States for the express purpose and with the intention, by the use thereof, of repaying the said loan when due; and, in the ordinary and usual course of business which it was then carrying on in this country, and particularly in New York City, the Deutsche would have so repaid the sum when due if war had not intervened between the United States and Germany.

The Deutsche Bank, named as defendant to the bill, has filed answer admitting the allegations thereof and consenting to the granting of the relief prayed.

On behalf of the Alien Property Custodian and on behalf of the Treasurer of the United States, joined as party defendant, motion to dismiss has been filed, based upon the grounds:

(1) That plaintiffs are claimants other than citizens of the United States, and that the debt which the plaintiffs are seeking to recover did not arise with reference to money or any other property held by the Alien Property Custodian or by the Treasurer of the United States, under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended.

(2) That the bill does not state a case for equitable relief under Section 9 of the Trading with the Enemy Act, as amended.

16 The pertinent part of subdivision (*e*) of said Section 9, and upon which reliance is placed in support of said motion to dismiss, is thus:

"No money or other property shall be returned nor any debt allowed under this section * * * as to claimants other than citizens of the United States unless it arose with reference to money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

The case has been argued both orally and in briefs submitted, and the questions involved have been carefully considered by the court in the light of said arguments and of the authorities submitted on behalf of the respective parties to the controversy, and, upon such careful consideration, the court is of opinion that the motion to dismiss should be sustained.

Appropriate order to that effect may be prepared and submitted, upon notice.

A. A. HOEHLING,
Justice.

May —, 1922.

17 Filed May 25, 1922. Wm. Tyler Page, Clerk.

House of Representatives,

Clerk's Office,

Washington, D. C.

I, William Tyler Page, Clerk of the House of Representatives of the United States, hereby certify that the attached printed document captioned "Trading with the enemy act," being the Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-sixth Congress, Second Session, on the bill H. R. 14028, and dated May 25, 1920, is a true and correct copy of said Hearing.

In witness whereof I hereunto affix my name and the Seal of the House of Representatives of the United States this twenty-third day of March, Anno Domini nineteen hundred and twenty-two.

[L. S.] WM. TYLER PAGE,
Clerk of the House of Representatives.

The Clerk will file as part of record in Eq. 39726.
A. A. HOEHLING,
Justice.

18 Trading with the Enemy Act.

Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-sixth Congress, Second Session, on H. R. 14208.

May 25, 1920.

Washington,

Government Printing Office.

1920.

19 *Committee on Interstate and Foreign Commerce.*

House of Representatives.

Sixty-sixth Congress.

John J. Esch, Wisconsin, Chairman.

Edward L. Hamilton, Michigan.
Samuel E. Winslow, Massachusetts.
James S. Parker, New York.
Burton E. Sweet, Iowa.
Walter R. Stiness, Rhode Island.
John G. Cooper, Ohio.
Franklin F. Ellsworth, Minnesota.
Edward E. Denison Illinois.
Everett Sanders, Indiana.
Schuyler Merritt, Connecticut.
J. Stanley Webster, Washington.
Evan J. Jones, Pennsylvania.
Thetus W. Sims, Tennessee.
Frank E. Doremus, Michigan.
Alben W. Barkley, Kentucky.
Sam Rayburn, Texas.
Andrew J. Montague, Virginia.
Charles P. Coady, Maryland.
Arthur G. Dewalt, Pennsylvania.
Jared Y. Sanders, Louisiana.

George Esch, Clerk.
A. H. Clark, Assistant Clerk.

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21 Trading With the Enemy.

Committee on Interstate and Foreign Commerce,

House of Representatives.

Tuesday, May 25, 1920.

The committee this day met, Hon. John J. Esch (chairman) presiding.

The Chairman: We have this morning for consideration the bill H. R. 14208, To amend section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended. This bill is in lieu of the bill H. R. 14607 introduced by myself on May 13. It has some changes and some additions, the additions consisting mainly of incorporating the provisions included in the Winslow and Butler bills.

Is there any order in which the representatives of the Government desire to be heard on this bill this morning? As I understand, there are representatives present from the State Department, the Department of Justice, and also the Alien Property Custodian.

Statement of Mr. Lucien H. Boggs, Special Assistant to the Attorney General.

Mr. Boggs: If it please the committee, I will simply point out for the benefit of the committee the portion of the bill in which the Department of State is primarily interested and also the portions which are suggested by the Department of Justice at its own instance, and I will then suggest that Mr. Hill, if agreeable to the committee, present the views of the State Department on the main portions of the bill.

The Chairman: You now have before you the last bill?

Mr. Boggs: Yes, sir; I have just received a copy of it.

As has just been pointed out by the chairman, subdivisions numbered two and three of subsection *b* were introduced in the committee from sources other than the department.

The Chairman: What page?

Mr. Boggs: Subdivisions Nos. 2 and 3.

The Chairman: On page 4.

Mr. Boggs: Yes, sir. Subdivision No. 5 was suggested by the Attorney General's office of its own motion and the Department of State has no responsibility with reference to that portion. With reference to subdivision No. 5 it is designed to procure the return of the property of those internees who are now living in this country. The department was impelled to recommend this to your committee from a variety of considerations, but the principal one of those considerations was the practical one that a great many of these internal parties are permitted to live in this country and that practically everything they had on earth was taken away from them by
22 the Alien Property Custodian and, as I believe, properly so, during the active period of the war because of the potential danger of leaving property in the hands of enemy citizens who were suspected of enemy activities during the war. That danger has now passed with the cessation of hostilities and we feel that there is no possible harm that these men can do any longer with that property. They have their livelihood to gain in this country and many of them have families dependent on them, and it seems a totally unnecessary hardship to impose on them and on the communities in which they reside to retain this property under the circumstances?

The Chairman: How many are there?

Mr. Boggs: I have, for the benefit of the committee, a list of all internees whose property is still held by the Alien Property Custodian and the amount of property which they hold.

The Chairman: Please give it in total?

Mr. Boggs: Yes, sir. The total amount of internee's property for which claims are now pending either in the Attorney General's Office or in the courts is $1,987,812.58. The amount for which no claim has been made is $2,332,556.92, making a total of $4,320,-369.50.

The Chairman: Can you give us the number of individuals involved?

Mr. Boggs: That I can approximate for you.

The Chairman: And put it in the record?

Mr. Boggs: Yes, sir.

The Chairman: Very well.

Mr. Boggs: There are approximately 100 individuals involved. I will see that the exact list is furnished to the committee.

The Chairman: Very well.

(The list of individuals submitted by Mr. Boggs follows:)

Name.	Trust No.	Amount.
Carl Heyhen	1403	$137,498.88
H. Mayer	3448	70.17
Paul Hellmuthhauser	4561	350.47
Emil Donnig	4603	103.93
F. A. Borgemeister	4977	26,444.54
Charles Pillack	5152	15,796.30
Francis J. L. Dorl	6127	2,194.72

	Name.	Trust No.	Amount.
	E. K. Victor	7536	443,830.35
	Walter E. Mingramm	7702	8,575.64
	Otto Schade	9074	297.76
	Richard Wackerow	9551	1,677.50
	Paul Hagspihl	9556	1,030.56
	E. F. Kuehn	10147	1,926.02
	Rudolph Hecht	10410	8,251.21
	Curt Draeger	10476	785.44
	Hermann G. Kulenkampff	11132	49.00
	E. Lutz	11133	64.82
	Hugo Schmidt	12774	78,962.82
	C. F. Tollner	12865	16,711.07
	Feliz Zweig	14343	17,394.61
	Federico Stallfort	14420	430,169.66
	A. K. Fischer	14796	49,133.65
	Paul John Sedelis	15627	480.51
	Emil E. Mayer	15625	8,722.83
	Karl Neumond	16259	235,626.47
	Franz Rosenberg	16404	27,422.28
	Dr. Willy Korthaus	16823	107.69
	Carl Pohl	16827	137.50
	G. B. Kulenkampff	17504	123,082.23
	George Kintz	17578	2,076.25
	Max Breitung	18524	506.55
	Ernest Kruger	18616	20.55
	Dr. Isaac Strauss	18685	14,274.10
	Adolf Koester	19019	207,807.15
	Gustav Mayer	19016	7,702.59
23	Gustav von Hasperg	19028	9,228.91
	Paul Koenig	19069	2,473.89
	Karl Kessler	19050	40.02
	Dr. Ernst Kunwald	19074	21,953.72
	Fritz Bergmeier	19077	5,151.92
	Jonathan A. W. Zenneck	19078	1,199.34
	Dr. Carl Muck	19587	66,018.51
	Dr. F. W. Hiller	19602	789.22
	Carl E. Jochhein	19934	1,152.32
	Otto Droste	19767	2,114.23
	R. W. Kiessling	19935	1,548.00
	Ernest Albrecht	21068	16.90
	Ludwig Hofmann	21120	41.26
	Dr. Wilhelm Koebbe	21123	175.82
	Hans Forchheimer	21380	2,489.62
	Richard G. Blumenthal	21969	8,404.00
	Hans Deinert	22061	265.11
	Paul Buehler	22250	3,374.32
	Johannes F. O. Teschemacher	22326	1.00
	John Mayer	22411	1.00
	Fritz Otto Uhlmann	22531	141.09

Name.	Trust No.	Amount.
Rudolph Aabruno	22638	181.35
Paul Fischer	22695	1,086.36
Max E. Truss	22854	256.64
Otto Weik	22855	583.55
Carl C. Tietgens	22889	60.21
Hans Anderson Huurholm	22920	101.48
Friedrich R. Schutze	22991	939.50
Otto Vogel	24023	1,440.82
William Scharpf	24065	83.01
Max Szurau	24088	662.97
George Egloff	24287	1,784.65
Heinrich Bockisch	24367	6,838.75
Oscar Lehmann-Schroeder	24531	42,874.13
Otto Soelle	24542	31.50
Harry Sulk	24555	333.77
Kurt A. Ludwig	25052	458.71
Albert G. Mathes	25320	214.07
Erich Albert Mathes	25321	1,096.90
Paul Gunther	25905	198.07
Carl Loebenich	26141	328.64
Oscar Bittman	26300	1,280.45
John Sattler	26745	100,441.51
Frank Smith	26876	292.26
George Wild	28514	11,375.67
George Kleinwort	28788	1,587.16
William Miller	29283	103.58
Julius Pirnitzer	30053	133,233.39
Joe Prekop	30875	848.62
Ignatz Pehan	33699	79.83
Willy Kellinghauser	35003	760.00
Paul Beer	38302	600.04
August Rodel	38722	18.00
Anders Jensen	39300	6,387.14
Karl Teschemacher	2499	729.62
Harold J. F. Kleffner	11810	221.64
John Kenfeld	14496	2,629.40
E. Grunert	15626	35.22
Alfred A. Gentzsch	15789	33.99
Carl Ritter	21222	531.40
Adolfo Meyer	22737	15,263.93
G. A. Sauerbrey	22738	473.97
Rudolf Konert	24430	864.00
W. Korten	25054	349.75

Mr. Boggs: It will be noted from the list which is furnished the committee that for the most part the holdings of these internees that are now in the hands of the Alien Property Custodian consist of very small amounts of money. Merely as an illustration I will read a few from the list: H. Mayer, $70.17; Hermann G. Kulenkampff, $49; and E. Lutz, $64.82.

The Chairman: Yet, if there are only 100 individuals involved the average would be $43,000?

Mr. Boggs: Yes, sir. There is one very large amount which is involved in litigation at the present time, and there are two other cases involved in litigation which are quite substantial in amount.

The amount involved in litigation or in claims before the
24 Attorney General's office is about $2,000,000. As I said, those are comprised in about seven or eight claims, so that the ones not involved in claims pending before the Attorney General and not involved in litigation are over 90 in number and involve, all told, only about $2,300,000; so that those would average, roughly, about $25,000 each.

We have had some rather distressing stories brought to us at the department of the hardships of some of the men who have been released. I remember one case where a man had been engaged in the jewelry business in Providence, R. I., and he had been interned because the information that had reached the Department of Justice at that time seemed to justify it, but there were no very serious charges against him, other than mere indiscretions in speech and things of that sort, and he had been released at a comparatively early date from the custody of the War Department. He was a trained expert in the jewelry business, but no other firm wanted to employ him, because they all assumed that just as soon as the war was over, if he was allowed to get his property back, he would go back into the jewelry manufacturing business again, and they did not want a rival in the business. The man had a family, and they were absolutely up against it; they did not have a thing on earth except charity to live on, although the holdings we had taken from him, I think in that case $30,000 to $40,000, would have been enough to keep them in comfort had we felt authorized to make the return.

In order to clear up one side so that it will be properly before the committee, I will say that in a few instances in the early stages of the game the department allowed some of these interned claims, but after a careful reconsideration of the entire legal situation the Attorney General reached the conclusion that the propriety of such returns was doubtful; he did not believe that he really had the power to make them, and therefore he rescinded his former ruling and thereafter adhered strictly to the policy that no claims of internees were allowable.

You gentlemen will realize that the provisions contained in this act were very novel and no lawyer after a careful study is bound to reach a perfectly sound and safe conclusion as the result of his first acquaintance with this act. Therefore, I say, on a reconsideration of the matter the Attorney General reached the conclusion that it was very doubtful, if not unlawful, for him to return any of this property, and he thereupon ceased to do it, because he did not wish to trespass upon what seemed to be the function of Congress. Those cases of allowance were very few in number and for the most part consisted of very small holdings indeed. I think there was one allowance, if I remember correctly, of about $30,000, all

the others were under $15,000, and the most of them were only matters of a few hundred dollars.

Mr. Denison: Were any of those in the list you have given at all active?

Mr. Boggs: No, sir. Thinking that the committee might want information on that subject, I have brought with me Mr. Hanna, of the Department of Justice, who has had very direct personal knowledge of all the internment cases, and he will be very pleased to give you such information as you want on that subject. I personally have not been familiar with the status of the cases, but Mr. Hanna is here and will be prepared to answer those questions.

Mr. Denison: Have they all been released?

Mr. Boggs: I think they have.

Mr. Hanna: The only exceptions are a few insane internees, still at St. Elizabeths Hospital, but there is no property involved.

Mr. Denison: Can you tell the committee what policy the Governments of Germany, Austria, and Hungary are following with our citizens in the same situation, if any?

Mr. Hill: The State Department received a telegram about three months ago, I think, from Germany, stating their purpose to release all property taken over, other than funds. In Austria they have not taken over property to any extent. We seem to have no trouble with Hungary. Germany is disposed to return all property other than funds. I have not heard of any case where they are not.

Mr. Denison: That information has been given to the Government officially?

Mr. Hill: Yes, sir; we got that direct from the foreign office, through our mission in Berlin, that they were willing to return all the American property other than funds.

Mr. Dewalt: Up to this time what, in brief, has been the legal procedure on the part of those people to have their property returned; what, in brief, has been the legal way?

Mr. Boggs: The first step in any instance is the filing by the claimant of a notice of a claim with the Alien Property Custodian. That notice is purely a notice, but it is the jurisdictional feature. Following that the claimant may adopt one of two remedies. He may pursue the nonlitigated route, in which event he likewise files with the Alien Property Custodian an application to the President for the allowance of his claim and with that he submits such papers in regard to his proof as he sees fit to submit, showing that he is lawfully entitled to the return of his property. Then the Alien Property Custodian makes such investigation of the facts as he considers necessary to make and forwards all the papers to the Attorney General's office for consideration. That is customary, though not provided for by the law.

Mr. Dewalt: Before you get to that subject, after the papers get into the Alien Property Custodian's office, then he passes upon them before he sends them?

Mr. Boggs: Not officially. He examines them with a view to determining the truth of the matters of fact, and if he considers that

it is advisable, from the standpoint of his office to make any further investigation of those facts outside, he makes that investigation.

Mr. Dewalt: Then he sends them to the Attorney General with a recommendation either for or against?

Mr. Boggs: Either for or against, or in some cases he sends them to the Attorney General without any recommendation.

Mr. Dewalt: They go to the Attorney General?

Mr. Boggs: Yes, sir.

Mr. Dewalt: What follows?

Mr. Boggs: Then those papers are considered by the special claims section of the Attorney General's office, and as at the present time constituted there is an examining committee of three members who must pass on every one of those claims before it is finally allowed or disallowed. Then, their findings pass on to the Assistant At-
26 torney General who is in charge of that work, and any order made allowing a claim or disallowing a claim must be signed by the Assistant Attorney General, and then those orders, whether they be of allowance or disallowance, are returned to the Alien Property Custodian's office for execution. In some cases the orders are directed to the Treasurer of the United States, because in the event of the property being money that money is not held by the Alien Property Custodian but by the Treasurer, and so, in the event that the order is directed to the Treasurer of the United States the Alien Property Custodian, for convenience, is made the executing arm for the Attorney General's office in that behalf. It is simply a matter of convenience, because the Alien Property Custodian has all the trust accounts on his ledger and he knows whether the property is only money or whether it consists of other things as well. If there is money involved he transmits that order to the Treasurer of the United States and procures the issuance of the check. If it is other property he arranges through his depositories for the return of that property to the claimant against a proper receipt.

Mr. Dewalt: As I understand, and if I am wrong you will correct me, up to this time the adjudication of these claims rests with the Attorney General?

Mr. Boggs: That is merely one of the methods, sir. The other method is the litigated method in the courts.

Mr. Dewalt: Please proceed with that.

Mr. Boggs: Yes, sir.

Mr. Dewalt: Before we get to that, you say that that has been abandoned, has it?

Mr. Boggs: No, sir. I say that is the method in vogue at the present time.

Mr. Dewalt: In the Attorney General's office now?

Mr. Boggs: Yes, sir.

Mr. Dewalt: I thought you just said a moment ago that he had rescinded that?

Mr. Boggs: No, sir. I referred only to the ruling on the legal status of internees. I said there had been a few cases at a much earlier date and the Attorney General's office had allowed these claims, but that on reconsideration he had decided that it was not

proper to do so and from the date of the reconsideration no further allowances had been made.

Mr. Dewalt: What you have said applies not only to these, but to others?

Mr. Boggs: To all claimants.

Mr. Dewalt: That is one method?

Mr. Boggs: Yes, sir.

Mr. Dewalt: The other is the litigated method?

Mr. Boggs: Yes, sir. That is accomplished in the first instance by the filing of a notice of claim, just as in the other case, and following that the claimant files a bill in equity in the district court of the United States in which he resides, or at his election, in the Supreme Court of the District of Columbia, and that bill in equity proceeds just along the line of other bills in equity and the same procedure is had thereon. The law provides that the Treasurer of the United States and the Alien Property Custodian, as the case may be,
27 are made parties to the bill, and they then file such answers, with the advice of the Attorney General of the United States, as they think proper to file, and the issues are made and the case is tried just as any other case is tried, and the decree has the same effect with regard to the funds or property in the hands of these respective officers that it would in case of any defendant in a chancery suit.

Mr. Dewalt: Under what provision of the trading with the enemy act do you conceive it to be in the power of the Attorney General to adjudicate these claims?

Mr. Boggs: It is by virtue of section 9, which gives to the President of the United States the power to consider these claims. Section 5 of the same trading with the enemy act gives to the President the power to delegate to other officers such of the powers therein as he may be advised, and he has exercised that right by delegating that power of passing on the nonlitigated claims to the Attorney General.

Mr. Dewalt: Under the present system the Attorney General and these three attorneys whom he has selected as a claims board would be able to settle the right of property as between the claimants and the United States Government and the Alien Property Custodian?

Mr. Boggs: Yes, sir.

Mr. Dewalt: Unless the party pursue the method of litigation?

Mr. Boggs: Yes, sir. It would be proper to state here that there is no res adjudicata created by an adverse decision of the Attorney General in the matter, because the statute expressly provides that if the President declines to allow the claim or fails to act on the same within 60 days after it has been filed, then the claimant has the right to proceed with a bill in equity just as though he had never applied for an Executive allowance.

Mr. Dewalt: That applies in both instances, either where there is a failure to act in 60 days or an adverse decision by the Attorney General?

Mr. Boggs: Yes, sir.

Mr. Denison: What effect upon that procedure would the passage of this act have, as outlined?

Mr. Boggs: It will have very little effect on the procedural side. The claims which I have been discussing so far have been those which are allowable under section 9 as originally enacted. In addition to them, there is a special class of claims that are known in the office of the Alien Property Custodian, for convenience, as the French and Belgian claims. In July, 1919, there was passed an amendement to section 9 which provided that if the President should find that in any given case the property of a supposed enemy was taken because of the fact that he was resident in the territory occupied by the armies of the enemy—I am using my own language, not quoting the act—in such cases if the President satisfies himself as to the truth of the facts he might on his own motion provide for the return of the property. That was done for convenience, because we had several hundred cases where French and Belgian property was taken solely for the reason that the owners were in territory occupied by the German Army.

I think I am correct in saying that this arrangement was made with the full knowledge and assent of the diplomatic corps of
28 the two countries principally involved, France and Belgium, and a number of these voluntary returns have been made in that manner.

Mr. Dewalt: What do you mean by voluntary return?

Mr. Boggs: By the executive department of its own motion. There, again, it takes an order from the President to do it. That power he has delegated to the Attorney General so the At-orney General makes the orders for the return of these properties; in that case there is a very much simpler procedure. The Alien Property Custodian's office simply certifies to the Attorney General's office that in the following cases we hold the following property which was taken simply by reason of the fact that the owners reside in territory occupied by the Army of the enemy and thereupon the At-orney General's office grants the order providing for the return of the property. The amendment which is here proposed is primarily an extension of the second method of executive relief, namely, by voluntary return.

Subsection *b* of the proposed act concerns itself entirely with that method of return, but it was not considered desirable or proper to restrict the parties solely to that method of getting their property back and therefore subsection *c* permits any person who would be entitled to receive his property back under the provisions of subsection *b* to apply for it in the usual way as originally contemplated in section 9. In other words, the department may not have had information, as a matter of fact, that he falls absolutely within the category outlined in this amendment, and if the department is not sufficiently speedy in returning the property to him, then he may file his notice of claim and proceed to recover either by the nonlitigated method or by suit as originally provided in the trading with the enemy act.

Mr. Dewalt: Does the proposed act have in contemplation the cases of residence of Alsace-Lorraine, occupied territory?

Mr. Boggs: Yes, sir.

Mr. Dewalt: How do you protect them and what rights do they receive under this act?

Mr. Boggs: That refers to subdivision No. 1 of subsection *b*, contained on page 4 of the present draft.

A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary—

As it now reads.

(including any State or free city in the four nations last named), and is at the time of the return of his money or other property hereunder a citizen or subject of any such nation or State or free city.

Now, that would permit the return to a person who was not a citizen at the time the property was taken and is not now a citizen of one of the enemy countries. In order to clarify the situation with regard to Alsace-Lorraine and other countries that have been transferred from enemy to nonenemy or friendly status, by virtue of the war, there has been inserted the proviso which is contained at the bottom of page 6 and following on page 7, the present draft of which reads:

Provided, That no person shall be deemed or held—

The Chairman: Line 22?

Mr. Boggs: Yes, sir.

29 Provided, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto, or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary (including any State or free city in the three nations last named), (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part).

That is one class of treaties which may accomplish it. The second class is:

Under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan of the other part.

In other words, if the status of a given piece of former enemy territory has been definitely changed to neutral or friendly territory by virtue either of one of the principal treaties of peace or by virtue

of a subsidiary treaty which has been made pursuant to such treaty of peace, and if either of these treaties of peace has been duly recognized either by the United States or by three or more of those powers named there, Great Britain, France, Italy, and Japan, then, in that event only do we recognize the change of status as having been properly accomplished; but it will be seen, I think, that these limitations will not at all prevent the return of Czechoslovakian property, the status of which Mr. Hill will be able to advise you more upon than I can, because it is a matter that pertains more to his department. As I understand, the status of Alsace-Lorraine has been absolutely fixed by the signature of the principal powers to the treaty with Germany, and the status of Czechoslovakian property; how is that, Mr. Hill?

Mr. Hill: It extends to all boundaries.

Mr. Dewalt: As I understand this provision, then, regardless of the fact that the United States has failed to ratify the treaty, the mere fact that three of the associated powers, to wit, France, Italy, and Great Britain, or France, Great Britain, and Japan, have ratified it, all the citizens of Alsace-Lorraine would have a legal status to recover their property which is now held in the United States?

Mr. Boggs: That would not be absolutely correct, sir; because under the treaty of peace, which has been signed between Germany and the other principal powers who were our cobelligerants in the war, it is not every person who is resident in Alsace-Lorraine who will acquire French citizenship. A certain class of residents of that country will ipso facto acquire French citizenship, and other classes are permitted the right to elect for French citizenship. Only the class that either ipso facto or who have the right of option are covered by this. In other words, those citizens or residents of Alsace-Lorraine who under the terms of the treaty are not recognized will not have the privilege under that treaty of becoming French citizens and will not be recognized by this proposed amendment.

30 Mr. Dewalt: Following that out, would I be correct in saying that the rights of the United States to this property now held would be largely determined by the construction of the treaty of Germany with the powers with reference to citizenship of those residents of Alsace-Lorraine and also dependent upon the ratification of these treaties by these associated powers other than the United States; is not that correct?

Mr. Boggs: That is true. Of course, you will note in the draft that *that* the ratification by the United States alone would accomplish the same purpose as would the ratification by any of the three of those other powers.

Mr. Dewalt: The ratification by the United States is not an accomplished fact, and I am speaking of the present state of affairs.

Mr. Boggs: Yes, sir.

Mr. Dewalt: Under the present state of affairs, the rights of this country to this property, if I am right in my construction, and if I am incorrect I wish you would correct me, would be determined by Germany with powers with reference to the citizen of Alsace-Lor-

raine, or second be determined by the action of the associated powers regardless of the action of the United States. Is not that it?

Mr. Boggs: I was not clear as to your distinction between the two classes.

Mr. Dewalt: This act provides that where a treaty has been signed and adopted by three of the contracting parties, to wit, either Japan, Great Britain, or Italy or Great Britain, France and Italy, that then their rights are determined by that, and then you couple that by saying that the right would be dependent upon the treaties with Germany as made with these signatory powers with reference to the citizen or resident of Alsace-Lorraine, and you also coupled it with the distinction that the parties resident in this country were not all ipso facto citizens of France, but some of them had the right of option or election as to their citizenship. Am I correctly stating that?

Mr. Boggs: Yes, sir. In other words, the treaty of peace in any given case would be the basis of whether or not the person was eligible for the return of his property.

Mr. Dewalt: Does it not follow upon that statement, if what I have premised is correct, that the rights of the United States to this property now held by the Alien Property Custodian are in a great measure, if not altogether, dependent upon the treaty then made between Germany and these signatory powers, and in the second place by the treaty which has been adopted by the three contracting parties with Germany?

Mr. Boggs: Well, I think you must couple with that the fact that it is only a limited class of relief that is contemplated by this provision. There is nothing anywhere in this amendment which would permit those three powers to determine that this country should return the property of Germans living in Germany, for instance, if that was the point which was in your mind?

Mr. Dewalt: That is not the point in my mind at all, but if this contemplates putting the citizens of Alsace-Lorraine in the status of having a legal basis for the recovery of their property, if their status is determined, as you say, to-wit, by election as to their
31 citizenship in one instance or secondly, by the treaty established between Germany and these three signatory powers, it seems to me that if the United States does not agree to the ratification of this treaty that we are shorn somewhat of our power over this property. I grant you that it would not be effective upon the United States, having possession of the property, to surrender it, but if this act passes, it seems to me there would be a fuller obligation upon the Alien Property Custodian and upon the President of the United States, if you please, to delegate the power to the Attorney General to see that this property was restored, because it includes this country in its provisions. In the first place it says, as I understand that if the treaty is signed by the United States then the thing happens, and, in the second place, it says if the treaty is not signed by the United States, then, if signed by three of the associated powers—I do not call them allies—then they have this status. I am merely throwing that

out to you as a suggestion. I am not certain of the position I am taking. It is more in the line of inquiry and information for the committee and myself that I am paying so much attention to the subject.

Mr. Boggs: You are entirely correct in saying that this would mean that the United States is definitely agreeing to surrender this property on the basis of treaties, either of peace or otherwise, to which it is not directly a party.

Mr. Dewalt: That is the point I am making.

Mr. Boggs: But, I think you will find there is nothing in the text of it that would necessarily make it objectionable to Congress, for the reason that the class of property that we are here proposing to return is essentially the property of persons who have been or will hereafter be recognized by practically all the civilized world as citizens of those countries.

To take the case of Czechoslovakia, you gentlemen are doubtless advised of the fact that there is a Czechoslovakian Legation in Washington to-day with a chargé d'affaires. While we have not become a party to any treaty which definitely recognizes that Republic, nevertheless here is the Czechoslovakian Legation right in our midst. I think this is a highly important consideration and that all Americans who have come in contact with the problem have already acceded to in their own minds, namely, that the war has accomplished certain definite changes of territory, changes of sovereignty, and changes of citizenship in Europe.

Mr. Dewalt: While that may be true, the objection raised in my mind is that Germany seems to have by the provisions of this act, and by your explanation thereof, the right to determine by its treaty with these associated powers as to the citizenship of some of those parties in Alsace-Lorraine?

Mr. Boggs: Yes, sir.

Mr. Dewalt: And if you are correct in that, then, in my mind it would be rather a vital objection to assenting to any such provision, because, for myself, I do not believe the time has yet come to give Germany any right to determine by any treaty that it makes with the associated powers what the rights of the United States shall be as to property which it has taken over during the course of the war for its own protection as against Germany. That would defeat the
32 very purpose of the alien-custodian act and the trading-with-the-enemy act, and, indeed, it would nullify what has already been done. But, I do not care to pursue the matter any further. Your explanation has been very interesting.

Mr. Boggs: If I may say just one word in reply to your last statement. I think you will find on studying the treaty of peace which these other powers have entered into with Germany that very careful consideration has been given to the classes of persons who are to be accorded this privilege, and that France, particularly, was very cautious in saying to whom it would accord the privilege of French citizenship in that country.

Mr. Dewalt: I should think that would be so.

Mr. Boggs: In other words, France was very cautious not to open the door wide and to welcome every person who happened to come along and wanted to get the privileges of French citizenship.

The Chairman: You change the existing section 9 by covering property which may have been seized by the Alien Property Custodian?

Mr. Boggs: Yes, sir.

The Chairman: Please give to the committee the reason for that change?

Mr. Boggs: The trading with the enemy act as originally enacted did not provide for the acquiring of property by the Alien Property Custodian, except in two methods. The first method was by a requirement issued by the President—which he delegated, of course, to the Alien Property Custodian—a requirement by which the President directed the person who had custody of enemy property to turn it over to the Alien Property Custodian. The other method provided for in the act as originally enacted was by voluntary conveyance. It was provided that in case any person had property that was enemy property in his possession he might voluntarily convey it or turn it over to the Alien Property Custodian and be relieved from any further responsibility in connection with it. But, on November 4, 1918, there was enacted an amendment to the trading with the enemy act which also gave the Custodian the power to seize property. That amendment was primarily designed to cover intangibles of various sorts, such as stocks, patents, and other things of that kind. Therefore, in order to make it harmonious and to show that we did not distinguish between property which came to the Custodian's hands in one way from that which came in another way, the word "seized" was added to the old portion of the act, giving the right of claim to a person who was not an enemy or alleged enemy. That part is merely declaratory of the interpretation that the Attorney General's office had already put upon the act. We have never attempted to make that distinction in our return of property. We took it for granted that it was the intention of the act to allow return in proper cases, whether the property had come into the Custodian's hands by virtue of conveyance or seizure, but in order to set at rest any future doubt on that subject we merely inserted the words "or seized by him" in this draft.

The Chairman: In March, 1918, I think, the Government seized the docks of the North German Lloyd and the Hamburg-American Co. in New York, and they were appraised and sold for a total
33 of $6,000,000 or $7,000,000. Did that money go to the Alien Property Custodian?

Mr. Boggs: Yes, sir; that came into the hands of the Alien Property Custodian.

The Chairman: That would be subject to disposition under the bill?

Mr. Boggs: Yes, sir.

Mr. Chairman, there are a few small textual amendments that we have made which do not in any wise alter the meaning of the bill but

which, I think, will help to clarify it. I have had two copies made for the convenience of the committee.

The Chairman: Very well.

(The amendments suggested by Mr. Boggs are as follows:)

In subsection (*b*): Insert on page 7, line 19, immediately following the words "and Japan (of the other part)," and before the sentence beginning with the words "And the receipt of"—

"For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation."

And in lieu of the above, delete the following:

In subdivision (1), the phrase immediately following the word "Austria-Hungary," reading "(including any State or free city in the four nations last named)."

In subdivision (6), the phrase immediately following the word "Austria-Hungary," reading "(including any State or free city in the four nations last named)."

In lines 4–5, page 7, the phrase immediately following the word "Hungary," reading "(including any State or free city in the three nations last named)."

Mr. Boggs: May I suggest that any purely clerical errors or the misspelling of words be corrected by the clerk.

The Chairman: Certainly.

Is there anything else which you desire to submit?

Mr. Boggs: No.

The Chairman: You have considered paragraph 2 on page 4 and paragraph 3 on page 4, which are embodiments of bills introduced by Congressmen Winslow and Butler?

Mr. Bogg: Yes, sir.

The Chairman: As far as you know, the Department of Justice and the Alien Property Custodian have no objection?

Mr. Boggs: No, sir. The feeling of the department is still the same as that stated by Mr. Garvan in his testimony before the committee; it is entirely a matter for your committee to consider. We are very glad to know that there is now submitted for consideration a draft which will not militate against the efficient administration of the office.

Mr. Winslow: The chargé d'affaires of the Czechoslovakian Republic made a presentation of his interest in this matter, which was referred to me in conversation with one of the representatives of he Alien Property Custodian. I asked that the statement be made to the Alien Property Custodian by the chargé d'affaires; and further, that the Alien Property Custodian furnish the statement made by the chargé d'affaires for the benefit of the committee. It seems to me it might be well to ask Mr. Boggs to read the communications to the

committee in order that we might have them at the moment,
34 as well as to get them into the record. If there is no objection, I will ask Mr. Boggs if he will kindly read those two documents.

Mr. Boggs: Certainly.

(The letter from the Alien Property Custodian reads as follows, bearing date May 24, 1920:)

Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

SIRS:

Pursuant to the suggestion of your committee, I take pleasure in inclosing a copy of a letter addressed to me by the honorable Jan Masaryk, chargé d'affaires for the American interests of the Czechoslovakian Republic, confirming a recent conversation between us concerning the property of Czecho-Slovak citizens held by my office. Information which has reached me from other reliable sources fully corroborates the statements made in Mr. Masaryk's letter, and I feel it proper to recommend that letter to your careful consideration.

I desire to add that I have been authorized by the Undersecretary of State to present this informal communication to you without recourse to the usual diplomatic channels because of the shortness of the time and the urgency of the State Department's desire that this relief be granted.

Respectfully,

FRANCIS P. GARVAN,
Alien Property Custodian.

That last paragraph, I may add, was due to the fact that ordinarily communications from a foreign representative do not come direct to the Alien Property Custodian, but through the State Department; but this was expressly authorized by Mr. Polk.

(The letter from the chargé d'affaires for the American interests of the Czechoslovakian Republic reads as follows:)

May 21, 1920.

Mr. Francis Garvan,
Care of Department of Justice, Washington, D. C.

MY DEAR MR. GARVAN:

In confirmation of our conversation of a few days ago about alien property, allow me to briefly state the situation regarding this matter.

As you know, there is a great deal of property still being held by the Alien Property Custodian belonging to the citizens of former Austria-Hungary, now Czechoslovakia, Roumania, and Jugoslavia. All the countries are sadly in need of credits, as you know, and due to the low rate of exchange they find untold difficulties in securing the necessary raw materials for our factories. Due to the same low rate of exchange, it would be very favorable to those owning property

held by the Alien Property Custodian to receive their property while the low rate of exchange prevails. As I told you, the Czechoslovak crown was down to 100 crowns to a dollar not very long ago. Because of our gradual stabilization the rate of exchange has improved, so that now it is around 60; therefore you see that the property of our citizens being held made the owners lose 40 per cent of the value of the property in crowns.

Czechoslovakia has been recognized by all the allied powers, and I do not see any reason why the property could not be released very soon; and I am sure by helping us to accomplish this you would help the good cause of many Europeans who are sadly in need of the funds held by the Alien Property Custodian.

I take the liberty to write this letter because of the kind interest you showed in our last meeting. Kindly consider it as a purely person unofficial communication, and be sure that in any way I can cooperate in accomplishing this very much needed release of the property, I should be only too happy to do it.

With best regard to Mrs. Garvan and the children.

Faithfully, yours,

JAN MASARYK.

Mr. Winslow: Will you kindly state to the committee what you understand to be the official attitude of the Alien Property Custodian with respect to the desire for immediate consideration of this proposed legislation?

Mr. Boggs: The official attitude of the Alien Property Custodian could, perhaps, more properly be stated by Mr. H. E. Ahern, the managing director of the office, whom I have asked to attend this hearing. I feel very sure, however, that he will correct me if I say too much or too little in that behalf.

The Chairman: I will state for the information of the members of the committee that I have a communication from the Attorney General and also one from the Secretary of State, regarding this legislation and its urgency.

Mr. Boggs: Yes, sir.

The Chairman: And I will put them in whatever report is made to the House on the bill.

Mr. Boggs: Yes.

The Alien Property Custodian is entirely in accord with the draft of the bill as submitted by the Department of Justice. The Alien Property Custodian feels that it is entirely proper that this return should be made and further feels that it would be very desirable, from the standpoint of efficient administration of his office and the conservation of public funds, that if the return is going to be made that it should be done as promptly as possible, because obviously it will require a very considerable force of experienced attorneys and clerks to accomplish the grouping of these properties and their return, if it is the intention of Congress to make the return. Therefore, if the legislation should be pending for a number of months it will probably necessitate a very considerable outlay of expenditure

which otherwise might be obviated, because if the Alien Property Custodian were to be informed at a very early date that he was authorized to release this property he could proceed at once with the force he has at hand and get rid of it and just curtail that much the activities of the office. It is very easy to see that in the handling of this property the mortgages, the collection of rents and interest, require a great deal of administrative work, and considerable expense on the part of the Government would be very easily obviated if it is determined by Congress to return the properties.

There is one provision which I see no discussion has been had upon so far, and that is subsection (*e*). That subsection is on page 9 and it is concerned entirely with the question of allowance of debts. The debts are allowed under section 9 of the act, and I may — that subdivision (*e*) is largely declaratory of the interpretation put upon the act as it now exists, by the department. That subdivision says:

No money or other property shall be returned nor any debts allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rates to citizens of the United States.

That is a slight change from the text of the act as it was originally passed because there the wording is "That any person, not an enemy, or ally of enemy" will file the claim for debt. But Mr. Hill will be able to advise you more definitely as to the basis for the suggestion, because it seems that Americans are also concerned as creditors with regard to enemy property under liquidation in Great Britain and France, and it seems desirable to the State Department that we should not allow the privilege of collecting debts here out of enemy property by citizens of France and Great Britain
36 unless a similar privilege is allowed to American citizens with reference to property there liquidated.

The next clause reads, "nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917. That, in the view of the department does not give the act a new meaning. It is simply declaratory.

The Chairman: In reference to the date mentioned, October 6, 1917, that was the date of the approval of the trading with the enemy act?

Mr. Boggs: Yes, sir. In other words, it has been consistently the view of the department that the privilege of collecting a debt out of enemy property was not a privilege which was intended to frustrate practically the entire purpose of the conservation of this property, as declared in section 12. To-day there is trade between the United States and Germany, and as such trade is lawful there would be no obstacle in the way of a merchant in New York sending a bill of goods valued, say, at $500,000 to a merchant in Leipsic and coming to the Alien Property Custodian and saying, "Please pay this bill." The effect would be merely to pay the enemy back his property in goods and leave the Government with an empty bag

in its hands. We do not believe the Congress intended there should be such a result; and, therefore, we have ruled that the act did not contemplate the payment of any debts which arose subsequent to the passage of the act. This section is merely declaratory of the interpretation that the department put upon it.

The next clause is "and as to claimants other than citizens of the United States, unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

We have in our hands probably a very much larger amount of enemy property than is the case abroad. It would very obviously be considerably to the advantage of enemy creditors living in France or Great Britain if they were free to come here and file claims for debts which may have arisen in France, Great Britain, or Italy and collect them out of property here. We do not believe you gentlemen even intended that to be the case. They have their own courts; they have their privilege under the treaty of proceeding there; and they have the privilege of joining the clearing house. I believe three of the powers have joined it. Therefore, it is our opinion that debts of non-American origin should be collected by other means than out of this property here.

But in the case of a citizen of France or Great Britain, who has a just debt that originated with reference to the property which is over here, in other words, where a German concern had a branch house here and that branch house here created a debt which is owed to a citizen of one of these friendly nations, there would seem to be no reason in justice or good morals why that property here should not pay it subject to the limitation that it must have been a debt that accrued prior to the enactment of the trading with the enemy act.

The Chairman: Have you a table showing the classification of the property held in trust by the Alien Property Custodian, and showing
37 the amount which has been turned over to the Secretary of the Treasury as the result of the enactment of the trading with the enemy act.

Mr. Boggs: Those figures are in the possession of the Alien Property Custodian.

The Chairman: If they could be inserted in the record it would be valuable information for the committee.

Mr. Boggs: The summary which Mr. Ahern, the managing director of the Alien Property Custodian's office has just handed me, shows that the total amount of property received is $555,939,263.85. The summary shows the disposition of that. It shows the amount of cash deposited with the Secretary of the Treasury to be $161,429,133.67, of which the amount invested is $150,216,866.10 and the amount uninvested $11,212,267.57.

The total amount of claims paid and deducted is $88,471,284.88.

The Chairman: You might put that statement in the record.

Mr. Boggs: I will be glad to do so.

(The statement referred to is as follows:)

Alien Property Custodian.

Daily Statement, May 21, 1920.

Total to date	$426,781,707.18
Claims paid and deducted per statement	88,471,284.88
Surrendered under voting trust	6,492,581.73
Enemy vessels seized by Government prior to trading-with-the-enemy act	34,193,690.06
Total property seized	555,939,263.85

Summary.

Cash deposited with the Secretary of Treasury:		
Invested	$150,216,866.10	
Uninvested	11,212,267.57	
		161,429,133.67
Cash with depositaries		592,545.96
Stocks		104,478,202.13
Bonds other than investments made by Secretary of Treasury		58,557,941.46
Mortgages		10,034,295.48
Notes receivable		2,155,881.56
Accounts receivable		20,836,607.07
Real estate		9,436,338.39
Miscellaneous general business, etc		59,260,761.46
		426,781,707.18

Accounts opened to-day	0
Accounts previously opened	35,622
Accounts opened to date	35,622

Last report, number opened on report register:

Yesterday	47,329
To-day	47,330
Increase	1

Number of trusts open on report register:

Yesterday	36,033
To-day	36,033

The Chairman: According to your list of suggested amendments you wish to insert a general provision and then you desire
38 to have certain expressions deleted where they are found because they are covered by the amendment.

Mr. Boggs: Yes: because they are covered by the amendment, and to avoid repetition. The purpose is merely to make it perfectly clear that we do not propose to give any better situation to one citizen of Germany than to any other citizen of Germany. There was some doubt expressed in the department as to whether we had safeguarded that properly, and for that reason these three clauses we are now proposing to delete were inserted. Later we found we could cover that more smoothly by this one interpretative phrase.

The Chairman: Would the city of Dantzig be considered a free city?

Mr. Hill: Not of Germany.

Mr. Cooper: I want to ask you a question purely for information. I have a citizen in my district who was a resident of Germany at the time we declared war on that nation. Everything he had—and he had accumulated considerable property there—was taken over by the German Government. Does the United States contemplate any relief in cases of that kind?

Mr. Boggs: That is, of course, for Congress to consider, as under section 12 Congress reserves to itself the disosition of all enemy property that is in the hands of the Government after the end of the war.

As to other methods of collecting claims of the sort referred to by Mr. Cooper, that is something I would like Mr. Hill to answer, as it is really a question for the State Department.

Statement of Mr Ralph W. S. Hill, Assistant Solicitor Department of State.

Mr. Hill: What is your question, Mr. Cooper?

Mr. Cooper: There is a man who is a citizen of this country, but who at the time war was declared was engaged in a manufacturing enterprise in Germany, and at the time we declared war upon Germany, he had to hurriedly leave the country. He got out of Germany and got back to the States, but Germany confiscated all his money he had in the banks and also took his property. He is wondering whether the United States will protect him and give him some relief for that loss.

Mr. Hill: He is an American citizen?

Mr. Cooper: Yes.

Mr. Hill: I stated to the committee before you came in that the State Department had made an inquiry as to the present treatment of our property in Germany, and about three months ago got a report through the American commissioner in Berlin, who is unofficially in Germany, from the German custodian of enemy property that the German Government was prepared at this time to re-

lease all property taken over other than cash holdings, so it is possible he could get back the property other than such funds.

Mr. Cooper: How about the money?

Mr. Hill: That might have to await the conclusion of the treaty of peace, since Germany possibly considers these funds as affected by the debts section of the treaty. Under the treaty all debts
39 owed between the nationals of two enemy countries are to be settled through a clearing house, to be established by the Governments concerned, and each State, upon ratifying of the treaty, must within a month notify whether it will adopt that provision. Of course, I can not indicate whether or not this Government will adopt the debts section. Germany is probably just marking time awaiting our action on the treaty and on the section in question before reaching a decision as to whether or not she will permit the debts to be paid directly, and it is possibly on that ground that she is holding up funds.

Mr. Cooper: Do you think our Government should compensate its citizens? We have taken over a lot of alien enemy property.

Mr. Hill: The only thing I can say is that under the terms of the treaty there are provisions for compensation for losses due to the acts of Germany with respect to property in that country. When the treaty becomes effective we will be in a position to take action in accordance with its terms in so far as Congress sees fit. If it does not become effective it will depend upon the negotiations we will make. But I am sure the department will do everything it properly can to protect the interests of American citizens.

Mr. Dewalt: The system as it is working out now between the signatory powers and Germany is, in practical effect, this, that they are balancing the accounts?

Mr. Hill: In the case of debts?

Mr. Dewalt: Yes. That is to say, if German citizens have claims against France, France takes into consideration those claims in the clearing-house system, so far as the citizens of Germany are concerned; and if French citizens have claims against Germany they are taken into consideration by the same clearing-house board, and they are balanced one against the other, and wherever the balance lies under the provisions of the treaty that balance is to be paid by the debtor. That is the way it works.

Your answer to Mr. Cooper's question is this, if I understand it correctly, that when the United States ratifies the treaty then that same system in all probability would be worked out between the United States and Germany through the system of clearing-house accounting.

Mr. Hill: I did not intend to convey that impression because I am not sure that we will adopt that section. That is entirely optional with the United States. Whether we do or not there is article 297 of the treaty, with its annex, which provides that enemy property taken over by any allied or associated governments—which would include the United States—may be used to pay claims due to their citizens because of the treatment of their property in Germany. Of course,

whether this provision becomes effective depends upon our ratification of the treaty. This section would cover the case involved in Mr. Cooper's question. The debt section on the other hand is an optional section and it is possible that we would not adopt it if we ratified the treaty.

The Chairman: Is there any other statement you desire to make to the committee?

Mr. Hill: Referring to Mr. Dewalt's inquiry of Mr. Boggs, I would like to make a brief statement. We mention here the treaties concluded by three of the four following powers: The British
40 Empire, France, Italy, Japan, or by the United States, that are to determine the citizenship status of persons whose property is to be returned. Unless we adopt this section of the bill our rights with respect to property taken over by the Alien Property Custodian are in no way affected by the provisions of any treaty between Germany and France or between Germany and any of those countries to which we are not a party.

But the feeling of the State Department was this: We would not like to continue to hold property of French citizens, although they at one time, because of conditions existing prior to the war, may have been German citizens, and the French Government has been pressing us very strongly on that point. Also, in the case of Czechoslovakia we have recognized an independent government. While the exact territorial boundaries of that State will probably have to be determined by the appropriate treaties of peace, the United States does not necessarily have to be a party to such treaties. In other words, Austria surrenders territory and Czechoslovakia acquires it, and any treaty which determines that status would be sufficient, whether we are a party to it or not. Of course, while we are still at war with Austria, this change of status could not, without our consent, affect our rights to property taken over.

It is only by laying down some such rule as that embodied in the bill that can determine who is a Czecho-Slovak. The citizenship status of a person depends upon the law, or treaties, of the State claiming him, aside from conflicting claims by two State as to the citizenship of any person, one State is not disposed to dispute the statement of another that a person is a citizen. For ins-ance, in a case where there is no conflict of citizenship between two countries I think any country will accept the statement of the United States that a person is an American citizen.

Mr. Dewalt: Whilst that is true, as a basic statement, is not this also true, that if the explanation as given by your predecessor who made a statement here is correct, that after all the status of the people in Alsace-Lorraine, and, if you please, in Czechoslovakia, is in part, at least, determined by the action of the government now existing in Germany, making treaties with France, and *the* these other parties, to which treaties we are not a party. There remains the stubborn fact, to my mind at least, that under the provisions of the trading with the enemy act we did take this property into possession, and we took it for the purpose of crippling Germany and

deprive them of funds, not for the purpose of confiscation, I grant you, and with the ultimate intention of returning it to the rightful owners. That is the purpose of the act, liberally construed. But, nevertheless, we have the property now in our possession, and it seems it may be entirely probable that under the provisions of this portion of the act the United States Government is placed in the position of saying to these governments and to these citizens of Alsace-Lorraine and Czechoslovakia that we, by this legislation, recognize your legal status and your right morally, from the fact that you have concluded a treaty with Germany, and as between Germany and France and between Germany and Austria, to this property. It seems to me that that is taking away from the United States Government one of the supporting crutches it stands on
41 in reference to this property. That is merely a legal view of it. I am not talking about the justice of it. I agree with you that the United States ought not to hold on to property which belongs to those people who were unfortunately in the territory of Germany or of Austria who wanted to be in friendly territory; for instance, those in Alsace-Lorraine. I sympathize very strongly with them, and I have not any animosity toward the provisions of the bill with reference to that. But I have only in my mind the legal aspects of this provision, as to whether it does not take away from the United States in larger measure the rights it has under the trading with the enemy act and nullify in part the very purpose of that act, relegating the power, in part at least, to Germany itself, by the fact that it makes these treaties.

Mr. Hill: It is only by treaty with Germany that France could acquire Alsace-Lorraine, in the absence of complete conquest, and necessarily there has to be some treaty between Germany and France which would recognize that status.

Mr. Dewalt: That is the treaty signed by all these signatory powers?

Mr. Hill: Yes. It is more or less basic that before a person in Alsace-Lorraine could become a Frenchman, Germany had to surrender her rights to that territory. Now, this having been done by the treaty of Versailles, there can not be any question, so far as Germany is concerned, with respect to the fact that these persons who have acquired French citizenship under the treaty are no longer Germans. Germany, therefore, has no further interest in their property, and its return would in no way affect any negotiations between that country and the United States, while it would favorably affect this Government's relations with France.

Mr. Dewalt: I think that is rather begging the question. However, you may proceed.

Mr. Hill: We are not bound by that treaty if we do not acquiesce in it, or by that status, and it is because we do acquiesce in the transfer of Alsace-Lorraine to France, and incidentally to a change in citizenship of certain classes of persons, that we are willing to make this concession.

Mr. Dewalt: Then, why put it in that disjunctive way; if the

treaty is to be ratified by the United States then this condition will exist, and if the treaty is not ratified by the United States and accepted by 3 of the 13 associated powers, then also this condition shall exist?

Mr. Hill: Whether or not the United States ratifies the treaty, Alsace-Lorraine has been transferred. Unless we have that provision in the disjunctive form we would be unable to return this property until the treaty was ratified by the United States. The treaty is in effect, the status has been fixed, and it is under a treaty to which we are not as yet a party.

The Chairman: Has there been any complaint on the part of foreign powers because of the seizures by the Alien Property Custodian of property belonging to diplomatic or consular officers of foreign countries?

Mr. Hill: There has been. As a rule, that property was not taken over, but in a few instances it has been taken over, owing to a misapprehension as to the fact that it was diplomatic property.

42 The Chairman: Even in the case of taking property under misapprehension, does the Alien Property Custodian construe the act in such a way as to deny him the power of restoration?

Mr. Hill: I understand that the Attorney General has held that he can not, under the act in its present form, release property which for any technical reason was enemy or ally of enemy property at the time of taking over.

The Chairman: How would that apply in the case of seizure of property belonging to residents of countries against which we have made no declaration of war? I have reference to Turkey and Bulgaria.

Mr. Hill: They are, under the trading with the enemy act, allies of the enemy, and the act gives authority to take over such property.

The Chairman: And we have taken over such property?

Mr. Hill: In a few instances. Early in the war the State Department requested the Alien Property Custodian to refrain as far as possible from taking over Turkish property because the amount of it in this country was comparatively small, while American investments in Turkey were many times larger. As a matter of policy, we thought it was better not to take over the small amount of property belonging to Turks in this country, because, if we did, then the Turks would probably take over the property of our citizens in Turkey. As it was, Turkey made no attempt to take over American property. This is also true in the case of Bulgaria.

The Chairman: Does that involve any considerable amount?

Mr. Hill: You mean the amount taken over here?

The Chairman: Yes.

Mr. Hill: I do not know the exact amount, but it was not very great. The department assured the Bulgarian Government, based on a statement from the Alien Property Custodian, that this Government would not take over Bulgarian property; but in one or two instances it was taken over, and under the ruling of the Attorney General he can not release prperty which technically could have been taken over at the time it was taken over by the custodian. An

amendment along the lines suggested in this bill is apparently necessary to permit the return of such property.

The Chairman: Does the seizure and retention of this property, by the Alien Property Custodian, of citizens of Czechoslovakia, Jugo-Slovakia, Bulgaria, Turkey, and Alsace-Lorraine, involve any embarrassment on the part of the State Department?

Mr. Hill: It does; yes, sir. In addition to that, they have taken the property of citizens of Switzerland, Holland, and other neutral countries, who at the time, by reason of residence in Germany or otherwise, were included in the term enemy. We have taken over that property, and under the present wording of the act the custodian can not release it, and the Attorney General can not upon application act favorably, because it was technically, enemy property at the time. We have a number of cases of that kind and they are causing a great deal of embarrassment.

I may also refer to the case of Czechoslovakia. This Government has recognized the Government of Czechoslovakia. Congress made an appropriation for a minister to that country and we have accredited a minister there. This Government has recognized
43 the existence of that country through the Executive, and yet we continue to hold the property of its citizens, which we can not release at this time without an amendment of the act, because they were enemies at the time the property was taken over. The Czecho-Slovak Government has pressed us a good deal for the return of that property. Conditions in Czechoslovakia, Poland, Jugo-Slavia, etc., are very serious and the return of their citizens' property, in view of the very advantageous rates of exchange at this time, would be of material assistance in the rehabilitation of those countries.

Take the case of Poland; the same situation exists there. We have a great deal of Polish property. Where the Poles were residing in that part of Poland which was formerly Austria-Hungarian or German territory, the department has been very much embarrassed because there is no discretion with the Attorney General to return such property. There has been considerable irritation shown by the various neutral countries and considerable pressure by these new associated States, such as Poland and Czechoslovakia and also Jugo-Slavia, which is a part of the Kingdom of the Serbs, Croats, and Slovenes. We continue to hold the property of their citizens, although they were our associates during the war.

Mr. Denison: Under the terms of this bill can that situation be met in the case you referred to of citizens of Sweden and Norway?

Mr. Hill: Paragraph 1 on page 4 permits the return of property of "a citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary (including any State or free city in the four nations last named)." That would permit the return of all such property.

I might mention paragraph 4 and also paragraph 8, the latter paragraph, says, "The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property con-

cerned was the diplomatic or consular property of such Government." I may say in explanation of these paragraphs that during the war, by an informal exchange of notes between the two Governments, Germany stated that she would not interfere with the American diplomatic or consular property in Germany, and this Government intimated that it would similarly treat German diplomatic and consular property in this country. The action of the two Governments was entirely in accord with international usage. It is possible, however, that in several instances such property was taken over through a misapprehension, and these paragraphs will permit the return of such property.

Mr. Winslow: As the official representative of the State Department, do you urge the earliest possible consideration of this measure?

Mr. Hill: The State Department is very anxious that this bill be passed as promptly as possible. We feel that there is considerable advantage to be gained in our relations with the various countries concerned.

Not along ago a telegram came to the department from Czechoslovakia inquiring as to our attitude with respect to their property, stating that privileges were being asked by our merchants over there and that that government wanted to know how friendly we were in regard to the treatment of their property in the United States.

44 Only this morning a copy of a telegram came to my desk from the American minister, Mr. Prague, telling of an article which had appeared in the local press there attacking the attitude of this Government in continuing to retain the property taken over by the Alien Property Custodian which belonged to Czecho-Slovak citizens, and pointing out what a serious loss such retention was to them, thus indicating that there is considerable irritation there at this time.

Mr. Dewalt: What attitude have France, Great Britain, and Italy taken with reference to the property they sequestered belonging to citizens of Czecho-Slovakia? Have they returned it?

Mr. Hill: They are returning it, I think, because under the treaty of peace it is provided they shall return it. I can not, however, definitely answer your question because I have no official information at hand.

The Chairman: Is there anybody else you desire to have heard, Mr. Boggs?

Mr. Boggs: I do not think so. I asked to be present a representative of the Alien Property Custodian's office and also a representative of the Department of Justice who had information concerning internees. These gentlemen are here and will be glad to answer any questions any member of the committee may desire to ask. I also have here our legislative man, the attorney who formerly had charge of this work in the Alien Property Custodian's office, Mr. Stellwagen, who was at the former hearing, who is more conversant with the history of the trading with the enemy act than I. All these gentlemen are at your service.

Mr. Dewalt: I would like to ask Mr. Ahern a few questions.

The Chairman: Certainly.

Statement of Mr. H. E. Ahern, Managing Director, Alien Property Custodian's Office.

Mr. Dewalt: You submitted a statement to Mr. Boggs a few moments ago in regard to the amount of property which was held, taken over by the alien property custodian, which I believe you said amounted to $550,000,000. That statement also showed that $161,000,000 was cash that had been turned over to the United States Treasury?

Mr. Ahern: Yes.

Mr. Dewalt: That accounts for $161,000,000 of cash. That would leave approximately $390,000,000 worth of property.

Mr. Ahern: Yes; from the $550,000,000.

Mr. Dewalt: What has become of that?

Mr. Ahern: We have returned on claims $88,471,284.88; we have surrendered under voting trusts to various companies, under arrangements sanctioned by the courts, $6,492,581.73, and the balance of it is in investments. There is an item of $104,478,202.13 in stocks. These are the appraised values at the time we took the property. There is also an item of $58,557,941.46 in bonds and $10,034,295.48 in mortgages.

Mr. Dewalt: Fifty-eight million dollars of what sort of bonds?

Mr. Ahern: Corporation bonds.

45 Mr. Dewalt: So that that may be made clear, I want to ask you a couple of questions. You have a balance, taking off the $88,000,000 in claims paid, and taking off the $161,000,000 of cash, of about $300,000,000 worth of property?

Mr. Ahern: Two hundred and sixty million dollars worth.

Mr. Dewalt: How do you account for that?

Mr. Ahern: There is $14,000,000 in stocks.

Mr. Dewalt: What sort of stocks?

Mr. Ahern: Various corporation stocks, railroad stocks, industrial stocks, mining stocks, any kind of stock.

The Chairman: Have you any stocks of insurance companies?

Mr. Ahern: I do not think there is any insurance company stock included.

NOTE.—In a communication dated May 28, 1920, Mr. Ahern states: "I find that I was in error in making this reply. There are stocks of a number of insurance companies, in most cases very small holding."

Mr. Dewalt: Does that represent the investment of moneys obtined by the sale of these various properties that were taken over?

Mr. Ahern: No; that represents securities which were taken over by us in the condition they were when we took them.

Mr. Dewalt: That represents then securities taken over by the alien property custodian which have not been converted?

Mr. Ahern: Yes.

Mr. Dewalt: And they were the original securities obtained by the Alien Property Custodian by sequestration?

Mr. Ahern: Yes; any investments made of funds taken over by us are made by the Secretary of the Treasury and they are in United States bonds.

Mr. Dewalt: I understand that. These stocks and bonds, which originally were taken over by the Alien Property Custodian, I should presume would still be in the hands of the Alien Property Custodian; are they?

Mr. Ahern: They are, or his depositaries.

Mr. Dewalt: Authorized under the act?

Mr. Ahern: Yes.

Mr. Dewalt: As to dividends upon these stocks and interest upon these bonds, where did that go?

Mr. Ahern: They come to the Alien Property Custodian quarterly; they are collected by the various depositaries and are remitted quarterly and then they go into the Treasury.

Mr. Dewalt: In this process of conversion, let us illustrate. A corporation is existant, having its location and its manufacturing enterprise in the city of New York. Upon investigation it was determined, and we will say properly determined, that it was owned and controlled by its majority stock, by alien enemies or by persons who resided in alien territory, which, under the terms of the act, were construed to be alien enemies. Now, after that determination, the Alien Property Custodian took over that property. If he could not get the stock, as held by the stockholders, he was authorized under the act, as I remember it, to have certificates of stock issued to him in place of those he could not actually obtain possession of.

He then obtained the controlling interest in the enterprise by having the majority of the stock. He then proceeded to elect his own board of directors because he had control of the stock and
46 if he saw fit, as in many instances he did—and prehaps very wisely; I do not question that—he sold, lock, barrel, and stock, the whole enterprise.

Mr. Ahern: Pardon me, it was usually the stock he sold.

Mr. Dewalt: I meant the whole concern when I said lock, barrel, and stock. He sold the whole enterprise. When he did not sell out he retained these stocks, as I understand it, and then represents a portion of this item.

Mr. Ahern: Yes.

Mr. Dewalt: Who is running the enterprises now in such instances, the Government?

Mr. Ahern: No; in cases where we had a large interest—a majority interest—we put in directors and they are running it now. In cases where the interests were small, the original directors are running it.

Mr. Dewalt: You elected a board of directors and they are running it for a new corporation formed by themselves?

Mr. Ahern: No.

Mr. Dewalt: Or are they running it for the Government?

Mr. Ahern: They are running it as stockholders of the old corporation. The Government, of course, receives dividends on such part of the stock as it holds.

Mr. Dewalt: Here is the Bosch Magneto concern, taking a concrete instance, which is a pretty large enterprise. That was sold?

Mr. Ahern: Yes, sir.

Mr. Dewalt: Before it was sold directors were appointed, managers were appointed, and they ran the concern for somebody. What became of that original stock? Was that all wiped out?

Mr. Ahern: The old stock, before we took it?

Mr. Dewalt: Yes.

Mr. Ahern: Yes; that is wiped out by the trading-with-the-enemy act, when the Alien Property Custodian makes the demand.

Mr. Dewalt: Then the new enterprise, when they became purchasers at public sale, formed a new corporation and went on with the business, but the Government derives nothing from them at all; that sale was complete?

Mr. Ahern: Yes, sir.

Mr. Dewalt: What became of that money obtained by the purchase; was that turned into the Treasury?

Mr. Ahern: That is in the Treasury.

Mr. Dewalt: Invested in Government bonds?

Mr. Ahern: In part, yes; there is $11,000,000 uninvested.

Mr. Dewalt: About how many, if you know, of these corporations taken over are still run by the old boards of directors for the Government, and the dividends obtained or the losses sustained by the Government? Have you any idea?

Mr. Ahern: No; I could not give you those figures.

Mr. Dewalt: How much, in millions of dollars, does that amount to?

Mr. Ahern: I can get you those figures.

Mr. Dewalt: It might be of interest to know how that stands. I would be interested to know that.

Mr. Ahern: I can get you those figures.

47 Mr. Dewalt: During this period have some of these institutions gone into the air, or are they still remunerative?

Mr. Ahern: Most of them are at least as profitable as they were two years ago.

Mr. Dewalt: Could a statement of that kind be obtained as to the working out of that plan?

Mr. Ahern: It could be, but it would take a long time to make it up. I will have it make up, if you wish to have one.

Mr. Dewalt: That is all, Mr. Chairman.

The Chairman: It it could be made up within a reasonable time so that it could be printed with our hearing, that might be done, but we would not like to have it delay the printing of the hearing.

Mr. Ahern: I will get one up as soon as I can and send it to you. We could give you a bald statement of the companies in which stock has not been sold, in which we have directors, but as for the profit on those concerns, I could not do it inside of several weeks.

Mr. Dewalt: The reason for my inquiry is just this, Mr. Chairman: If, by the provisions of this bill, we are legally and in part morally bound to consider claims of Alsatians and Lorrainians and the Czecho-Slavs, the ultimate result, in large measure, would be that a great deal of this property taken over by the Alien Property Cus-

todian in the shape of this corporate interest with the accretion of dividends, etc., and with the accretion of interest upon bonds and the like will be a legitimate claim upon the part of those citizens, and therefore it will be of considerable moment to know just what that is going to amount to.

Mr. Ahern: It will be a small percentage of their claims here; the corporation holdings are very small.

Mr. Dewalt: I am glad to hear you say that. It might be the other way.

The Chairman: You might get as much of the information asked for by Judge Dewalt as you can when you get the transcript of your hearing, and later you might supply the committee with the further data.

Mr. Dewalt: It might be well, in that same reference, if it is at all possible, to ascertain what the expense of running some of these corporations has been, with the salary lists, that was running along with this management of the various corporations taken over by the Alien Property Custodian.

Mr. Ahern: I am afraid you are asking me to do something that will take weeks.

Mr. Winslow: If you were to do that, could you make a comparison of the previous expenses?

Mr. Ahern: That would take months.

Mr. Hamilton: That sort of information will be eventually forthcoming, will it not?

The Chairman: I think that has been inquired into by a Senate committee under a resolution adopted by the Senate.

Mr. Hamilton: Will that not be a part of the custodian's report, eventually?

The Chairman: The custodian has made a report.

Mr. Ahern: I think I might say, Mr. Chairman, that not more than three or four of these corporations would be affected by
48 this bill. Of course, there are a great many people who hold 10 shares, here and there, but I mean of the corporations that we could control, there would not be more than three or four affected by this amendment.

Mr. Stiness: I would like to ask you a question. Has the property which has come into the hands of the Alien Property Custodian been invested by the custodian or by the Treasury Department?

Mr. Ahern: By the Treasury Department.

Mr. Stiness: When you mentioned this amount of $555,000,000, do you include the Government bonds at market value or at par?

Mr. Ahern: At par.

Mr. Stiness: Well, that is not the real amount of assets—that is, the $555,000,000—so far as those bonds are concerned?

Mr. Ahern: No, sir; we have not marked up and down the value of the securities; we have taken them at the appraised value at the time we received them.

(A list compiled by Mr. Ahern of the corporation, in which the interests of the Alien Property Custodian are at present represented by directors, is as follows:)

American Refractories Co.

(Silica, Magnesia, Chrome, and Fire-clay Brick.)

Address: 315 Union Arcade, Pittsburgh, Pa.
Authorized capital: $1,500,000 common, $500,000 preferred.
Issued: $1,302,800 common, $250,000 preferred.
Enemy interest: $207,300 common, $47,500 preferred (15 per cent).
A. P. C. director: W. Harrison Nesbit, Bank of Pittsburgh, Pa.; elected October 7, 1918.

American Trans-Atlantic Co.

(Operation of Ocean-going Vessels.)

Address: 17 Battery Place, New York City.
Authorized capital: 100,000 shares common of no par value, $2,500,000 preferred.
Issued: 100,000 shares common of no par value, $29,500,000 preferred.
Enemy interest: 100,000 shares common, $2,500,100 preferred (100 per cent).
Number of directors: Not less than three nor more than nine.
A. P. C. directors: Henry L. Doherty, 60 Wall Street, New York (September 10, 1918); Henry Thompson, 141 Broadway, New York (August 29, 1918); Charles H. Sabin, 140 Broadway, New York (August 29, 1918); F. B. Lynch, 8 Bridge Street, New York City (August 29, 1918); John Quinn, 31 Nassau Street, New York City (August 29, 1918); Joseph F. Qualey, 25 Pine Street, New York (August 29, 1918); Col. Douglas I. McKay, 30 Church Street, New York (March 28, 1919); James H. Gannon, Spring and MacDougal Streets, New York (March 28, 1919).

Amid-Duron Co.

(Wood Scouring and Cording of Oils.)

Address: 100 William Street, New York City.
Authorized capital: $10,000 common.
Enemy interest: $5,000 common (50 per cent).
Number of directors: Four.
A. P. C. directors: E. B. Humpstone, 170 Broadway, New York (May 15, 1918); Preston M. Brock, care of Brigham Hopkins & Co., Twenty-third and Fifth Avenue, New York (July 29, 1918).

49 Anglo-American Cotton Co.

(Dealers in Cotton and Cotton Waste.)

Address: 200 Summer Street, Boston, Mass.
Authorized capital: $50,000 common.
Enemy interest: $50,000 common (100 per cent).

Number of directors: Three.

A. P. C. directors: James C. Howe, Old Colony Trust Co., Boston, Mass. (June 24, 1918); Chandler M. Wood, 35 Congress Street, Boston, Mass. (June 24, 1918); B. Devereux Barker, 35 Congress Street, Boston, Mass. (April 20, 1920).

Atlantic Communication Co.

(Manufacture and Deal in Electrical, Mechanical, Magnetical Contrivances, etc.)

Address: 47 West Street, New York City (owner of wireless plant, Sayville, Long Island).

Authorized capital: $300,000 common, $200,000 preferred.

Issued: $270,000 common, $125,000 preferred.

Enemy interest: $259,900 common, $125,000 preferred (97 per cent common, 100 per cent preferred).

Number of directors: Five.

A. P. C. directors: John C. Tomlinson, Jr., 15 Broad Street, New York City (June 7, 1918); Alexander Kenney, president (June 7, 1918); Ralph J. Baker, Harrisburg, Pa. (September 27, 1918); L. G. Munson (November 18, 1918).

Baertl Anti-Slip Cement Co.

(Selling System for Belt-drive Efficiency.)

Address: 97-99 Water Street, New York City.

Authorized capital: $50,000 common.

Issued: $36,000 common.

Enemy interest: $25,100 common (70 per cent).

Number of directors: Five.

A. P. C. directors: Thomas Hassett, 15 Park Row, New York City (December 8, 1919); A. R. Byrd, Jr., Equitable Building, New York City (December 8, 1919); Medad E. Stone, 75 Murray Street, New York City (December 8, 1919).

R. G. Barthold & Co., Inc.

(Exporting and Importing.)

Address: 4 Stone Street, New York City.

Authorized capital: 1,000 shares of no par value.

Enemy interest: 500 shares of no par value (50 per cent).

Number of directors: Three.

A. P. C. directors: John W. Hannon, 115 Broadway, New York City (July 31, 1919); C. R. Austin, 30 Church Street, New York City (July 31, 1919).

Beer, Sondheimer & Co. (Inc.).

(Dealers in Metals, Especially Copper and Zinc.)

Address: 61 Broadway, New York City.
Authorized capital: $1,202,000.
Enemy interest: $1,202,000 (100 per cent).
Number of directors: Seven.
A. P. C. directors: Edward M. McIlvain, 120 Broadway, New York City (August 2, 1918); Louis A. Watres, president Scranton Trust Co., Scranton, Pa. (August 2, 1918); John P. Grier, 15 Broad Street, New York City (August 2, 1918); Ford Huntington, 15 Day Street, New York City (August 2, 1918); Frederick J. Fuller, Central Union Trust Co., 80 Broadway, New York City (August 2, 1918).

F. Bing (Inc.).

(Carrying on Domestic and Export Business in Hops and Malt.)

Address: 32 Broadway, New York City.
Authorized capital: $30,000 common.
Enemy interest: $25,000 common (83 1/3 per cent).
Number of directors: Three.
A. P. C. directors: William F. Keohan (July 29, 1919); Everett E. Rowell, 110 West Forty-second Street, New York City (July 29, 1919).

Botany Worsted Mills.

(The Manufacture and Sale of Worsted, Woolen and Other Yarns, and Textile Goods.)

Address: 200 Fifth Avenue, New York City.
Authorized capital: $3,600,000 common.
Enemy interest: $2,561,000 common (71 per cent).
Number of directors: Not less than 7 nor more than 11.
A. P. C. directors: Horace C. Jones, Conshohocken, Pa. (March 26, 1918); Thomas F. Martin, Union Hill, N. J. (March 26, 1918); Thomas J. Maloney, Bergen Avenue, Jersey City, N. J. (March 26, 1918); Douglas I. McKay, 30 Church Street, New York City (March 27, 1918); William H. Folwell, 625 Chestnut Street, Philadelphia, Pa. (March 26, 1918); Richard Stockton, Trenton, N. J. (August 20, 1918).

The Charles E. Bresler Estate Land Co.

(Real Estate, Holding and Renting.)

Address: 1660 Second Avenue, Detroit, Mich.
Authorized capital: $90,000 common.
Enemy interest: $15,000 common (16 per cent).
Number of directors: Four.
A. P. C. director: Ralph Stone, president Detroit Trust Co., Detroit, Mich. (April 15, 1919).

Bruckman Can Machinery Co.

(Manufacturing of Can Machinery and Cans.)

Address: 100 Howard Street, San Francisco, Calif.
Authorized capital: $35,000 common.
Enemy interest: $35,000 common (100 per cent).
Number of directors: Five.
A. P. C. directors: Thomas Jennings, Spear and Howard Streets, San Francisco, Calif. (December 27, 1918); F. H. Green, 72 Freelon Street, San Francisco, Calif. (December 27, 1918); Joseph E. Keenan, 2646 Union Street, San Francisco, Calif. (December 27, 1918); Thomas Morrin, Phelan Building, San Francisco, Calif. (December 27, 1918).

C. Bruno & Son (Inc.).

(Manufacturers of Musical Instruments.)

Address: 351 Fourth Avenue, New York City.
Authorized capital: $250,000 common.
Enemy interest: $179,466 common (72 per cent).
Number of directors: Six.
A. P. C. directors: Alex. B. Halliday, 44 Pine Street, New York City (May 17, 1918); Henry C. Hawk, 61 Broadway, New York City (May 17, 1918); Raymond E. Jones, 42 Wall Street, New York City (May 17, 1918); Karl R. Miner, 44 Pine Street, New York City (January 20, 1919).

The Brynhilda Shipping Corporation.

(Shipping.)

Address: 17 Battery Place, New York City.
Authorized capital: $72,000 common.
Enemy interest: $67,000 common (93 per cent).
Number of directors: Five.
A. P. C. directors: George M. Woolsey, 15 Broad Street, New York City (Oct. 11, 1918); George C. Van Tuyl, Jr., president Metropolitan Trust Co., New York City (Oct. 11, 1918); George S. Hier, 277 Broadway, New York City (Oct. 11, 1918); George H. Gibson, 142 East Thirty-third Street, New York City (Apr. 6, 1920).

51 Ceresit Water-proofing Co.

(Manufacturing Waterproofing Process.)

Address: 110 South Dearborn Street, Chicago, Ill.
Authorized capital: $75,000 common.
Issued: $54,200 common.
Enemy interest: $52,000 (95 per cent).
Number of directors: Five.

A. P. C. directors: R. B. Upham, 122 Michigan Avenue, Chicago (May 1, 1918); George E. Brennan, Corn Exchange National Bank, Chicago (May 1, 1918); John W. O'Leary, president Chicago Association of Commerce, Chicago (May 1, 1918); A. M. Rode, care of Peoples Trust and Savings Bank, Chicago (May 1, 1918).

Chromos Chemical Co. (Inc.)

(Manufacture and Sale of Chemicals and Chemical Compounds.)

Address: Aeolian Hall, New York City, N. Y.
Authorized capital: $90,000 common.
Issued: $10,000 common.
Enemy interest: $10,000 common (100 per cent).
Number of directors: Three.
A. P. C. directors: Edward K. Hanlon, president (Dec. 24, 1919); Daniel W. Morgan, jr., 52 William Street, New York City (Dec. 24, 1919).

Columbia Brewing Co.

(Manufacture of Lager Beer and Ice.)

Address: 520 Elysian Field Street, New Orleans, La.
Authorized capital: $400,000 preferred.
Enemy interest: $80,000 preferred (20 per cent).
Number of directors: Seven.
A. P. C. director: George Denegre, 217 Carondelet Street, New Orleans, La. (Aug. 14, 1918).

J. P. Devine Co.

(Manufacture of Vacuum Dryers.)

Address: 1372 Clinton Street, Buffalo, N. Y.
Authorized capital: $100,000 common.
Enemy interest: $50,000 (50 per cent).
Number of directors: Four.
A. P. C. director: Edward R. Bosley, 807 D. S. Morgan Building, Buffalo, N. Y. (February 3, 1920).

Diamond Fish Co.

(Packers of Salt Herring.)

Address: 518 Central Building, Seattle, Wash.
Authorized capital: $30,000 common.
Enemy interest: $15,000 common (50 per cent).
Number of directors: Three trustees.
A. P. C. director: H. D. Folsom, jr., 507 White Building, Seattle, Wash. (elected trustee May 21, 1919).

Didier-March Co.

(Manufacturing of Refractories and Gas Retorts—Engineering and Construction.)

Address: 15 Exchange Place, Jersey City, N. J.
Authorized capital: $400,000 common, $750,000 preferred.
Enemy interest: $400,000 common, $750,000 preferred (100 per cent.)
Number of directors: Five.
A. P. C. directors: George H. Flinn, 17 Battery Place, New York City (April 15, 1918); Edward M. McIlvain, 120 Broadway, New York City (May 28, 1918) M. P. Quinn, Bailey Building, Philadelphia (June 11, 1918); Frank R. Valentine, Woodbridge, N J. (March 12, 1919).

52 Dieckerhoff, Raffloer & Co.

(Importing and Dealing in Notions.)

Address: 560 Broadway, New York City.
Authorized capital: $1,000,000 common, $500,000 preferred.
Outstanding: $985,000 common, $492,500 preferred.
Enemy interest: $283,500 common, $141,750 preferred (28 per cent plus).
Number of directors: Five.
A. P. C. directors: Charles B. Macdonald, 15 Broad Street, New York City (June 11, 1918); Ernest Harvier, 29 West Tenth Street, New York City (August 13, 1918); George H. Flinn, Whitehall Building, 17 Battery Place, New York City (June 5, 1918).

Ely Coal Co.

(Coal Mining.)

Address: Girard, Ill. (principle offices, Springfield, Ill.).
Authorized capital: $2,000,800 common.
Enemy interest: $2,000,000 common (99 per cent).
Number of directors: Not less than five nor more than nine.
A. P. C. directors: James M. Graham, Springfield, Ill. (June 26, 1918); Albert H. Rankin, Sangamon Loan & Trust Co., Springfield, Ill. (June 26, 1918); John H. McCreery, St. Nicholas Hotel, Springfield, Ill. (June 26, 1918); George Whyel, Uniontown, Pa. (June 26, 1918); Charles J. Peterson, jr., Springfield Marine Bank, Springfield, Ill. (June 26, 1918).

Fahlberg Saccharine Works of America.

(Manufacture of Saccharine.)

Address: 44 Wall Street, New York City.
Authorized capital: $20,000.
Enemy interest: $20,000 (100 per cent).
Number of directors: Four.
A. P. C. directors: Elek J. Ludvigh, 501 Fifth Avenue, New York City (August 12, 1918); Frederick A. Bishop, 542 Monroe Street, Brooklyn, N. Y. (August 12, 1918); Thomas J. Brady, 31 Nassau Street, New York City (August 12, 1918); Lester C. Burdett, Woolworth Building, New York City (August 12, 1918).

Finck Estate.

(Handling of Real Estate.)

Address: 101 Barton Street, St. Louis, Mo.
Authorized capital: $25,000 common.
Enemy interest: $8,333.33 common (33½ per cent).
Number of drectors: Three.
A. P. C. director: Mr. W. F. Carter, care of Mercantile Trust Co., St. Louis, Mo. (July 30, 1918).

The Flexitype Co.

(Importing Matrix Paper.)

Address: 1570 West Third Street, Cleveland, Ohio.
Authorized capital: $10,000 common.
Enemy interest: $5,600 common (56 per cent).
Number of directors: Five.
A. P. C. directors: George Coulton, president Union Commercial National Bank, Cleveland, Ohio (September 12, 1918); E. H. Baker, Cleveland Plain Dealer, Cleveland (September 12, 1918); Charles R. Dodge, president State Banking & Trust Co., Cleveland, Ohio (September 12, 1918).

Foreign Transport and Mercantile Corporation.

(Operation of Ocean-going Vessels.)

Address: 17 Battery Place, New York City.
Authorized capital: 245,000 shares of no par value common; $2,500,000 preferred.
Enemy interest: 240,000 shares common (97 per cent); $2,459,-700 preferred (98 per cent).
53 Number of directors: Not less than three nor more than nine.

A. P. C. directors: Henry L. Doherty, 60 Wall Street, New York City (September 10, 1918); Henry Thompson, 141 Broadway, New York City (August 29, 1918); Charles H. Sabin, 140 Broadway New York City (August 29, 1918); F. B. Lynch, 8 Bridge Street, New York City (Holdover); John Quinn, 31 Nassau Street, New York City (August 29, 1918); Joseph S. Qualey, 25 Pine Street, New York City (August 29, 1918); Col. Douglas I. McKay, 30 Church Street, New York City (March 28, 1919); James H. Gannon, Ridgeway Co., Spring Street and McDougal Street, New York City (March 28, 1919).

Forstmann & Huffmann Co.

(Manufacturers of Woolen and Worsted Yarns and Goods.)

Address: 2 Barbour Avenue, Passaic, N. J.
Authorized capital: $2,000,000 common, $3,500,000 preferred.
Enemy interest: $344,000 common, $717,000 preferred (common 17 per cent, and preferred 20 per cent).
Number of directors: Six.
A. P. C. director: Edward I. Edwards, 1 Exchange Place, Jersey City, N. J. (Mar. 26, 1918).

Gans Steamship Line.

(Chartering of Vessels and Cargo.)

Address: 12 Broadway, New York City.
Authorized capital: $100,000 common.
Enemy interest: $15,000 common (15 per cent).
Number of directors: Five.
A. P. C. director: Mortimer N. Buckner, 26 Broad Street, New York City (February 4, 1919).

General Briquetting Co.

(Briquetting and Licensing Briquetting Processes.)

Address: 25 Broad Street, New York City.
Authorized capital: $1,000,000 common, $250,000 preferred.
Outstanding: $543,500 common.
Enemy interest: $299,990 common (no preferred, 46 per cent common).
Number of directors: Nine.
A. P. C. directors: Moritz Rosenthal, 25 Broad Street, New York City (re-elected); Wm. H. Harrison, 200 Fifth Avenue, New York City (June 7, 1918); Willard H. Platt, 109 Duane Street, New York City (June 7, 1918).

Gerhard & Hey (Inc.).

(Freight Contracting.)

Address: 21-24 State Street, New York City.
Authorized capital: $100,000 common.
Enemy interest: $100,000 common (100 per cent).
Number of directors: Three.
A. P. C. directors: Medad E. Stone, 75 Murray Street, New York City (Mar. 13, 1919); Charles H. Strong, 27 Cedar Street, New York City (Mar. 22, 1919); Walter G. Dunnington, Jr., 5 Nassau Street, New York City (Feb. 5, 1920).

German American Bronze Powder Manufacturing Co.

(Manufacture, Import, and Deal in Bronze and Other Metallic Powders.)

Address: 38 West Thirty-second Street, New York City.
Authorized capital: $60,000 common.
Issued: $43,000 common.
Enemy interest: $36,000 common (83 per cent).
Number of directors: Three.
A. P. C. directors: Chas. S. Hallowell, 461 Fourth Avenue, New York City (Aug. 19, 1918); W. F. Powers, 30 Ferry Street, New York City (Aug. 19, 1918); H. F. Browne, 59 Leonard Street, New York City (Aug. 19, 1918).

54 The German Consolidated Newspaper Co.

(Publishing Newspaper.)

Address: 1566 West Third Street, Cleveland, Ohio.
Authorized capital: $100,000 common.
Enemy interest: $40,500 common (40 per cent).
Number of directors: Five.
A. P. C. directors: George Coulton, president Union Commercial National Bank, Cleveland, Ohio (Sept. 12, 1918); E. H. Baker, publisher Cleveland Plaindealer, Cleveland, Ohio (Sept. 12, 1918).

The Press & Plate Co.

(The German Press & Plate Co.)

(Publication of Newspaper.)

Address: 1562-1578 West Third Street, Cleveland, Ohio.
Authorized capital: $100,000 common.
Enemy interest: $52,900 common (52 per cent).
Number of directors: Five.

A. P. C. directors: George Coulton, president Union Commercial National Bank, Cleveland, Ohio (Sept. 12, 1918); E. H. Baker, publisher Cleveland Plaindealer, Cleveland, Ohio (Sept. 12, 1918); Charles R. Dodge, president State Banking & Trust Co., Cleveland, Ohio (Sept. 12, 1918).

Goldschmidt & Loewenick (Inc.).

(Buying and Selling Slippers.)

Address: 129 Duane Street, New York City.
Authorized capital: $50,000 common.
Issued: $40,000 common.
Enemy interest: $20,000 common (50 per cent).
Number of directors: Three.
A. P. C. director: A. S. Webb, president Lincoln Trust Co., New York City (Oct. 22, 1918).

Gottschalk, Dreyfuss & Davis (Inc.).

(Dealers in Lithographic and Other Process Prints.)

Address: 877 Broadway, New York City.
Authorized capital: $25,000 common.
Enemy interest: $25,000 common (100 per cent).
Number of directors: Three.
A. P. C. directors: H. B. Coho, 111 Broadway, New York City (Oct. 4, 1918); R. E. Fox, 32 West Fortieth Street, New York City (Oct. 4, 1918); W. H. Williams, 120 Broadway, New York City (Oct. 4, 1918).

W. Hagelberg (Inc.).

(Importing, Publishing, and Dealing in Lithographs and Prints.)

Address: 43 Exchange Place, New York.
Authorized capital: $50,000 common.
Enemy interest: $50,000 common (100 per cent).
Number of directors: Three.
A. P. C. directors: R. E. Fox, 32 West Fortieth Street, New York City (Jan. 28, 1918); Harold Harwood, 43 Exchange Place, New York City (Apr. 1, 1919); A. W. Bennett, A. P. C. Office, New York City (Apr. 1, 1919).

Haaeman-de Laire-Schaefer Co.

(Manufacture of Chemicals.)

Address: Maywood, N. J.
Authorized capital: $60,000 common.
Issued: $15,000 common.
Enemy interest: $5,000 common (33⅓ per cent).

Number of directors: Four.
A. P. C. director: Bird W. Spencer, Peoples Bank & Trust Co., Passaic, N. J. (Sept. 4, 1918).

55 Hammacher, Schlemmer & Co.

(Importing and Sale of Hardware and Kindred Goods.)

Address: 133 Fourth Avenue, New York City.
Authorized capital: $360,000 common.
Enemy interest: $60,000 (16 per cent).
Number of directors: Five.
A. P. C. director: Medad E. Stone, 75 Murray Street, New York City (October 29, 1918).

Hanover Vulcanite Co.

(Importing of Rubber Goods.)

Address: 109 East Sixteenth Street, New York City.
Authorized capital: $10,000 common.
Enemy interest: $9,700 common (97 per cent).
Number of directors: Three.
A. P. C. directors: Wm. K. La Bar, Stroudsburg, Pa. (December 20, 1918); Wm. C. Amos, 250 West One hundred and third Street, New York City (December 20, 1918); J. V. Campbell, 35 West Thirty-ninth Street, New York City (December 20, 1918).

Charles E. Hansen Estate Co.

(Holding Company—Real Estate and Securities.)

Address: 762 Fulton Street, San Francisco, Calif.
Authorized capital: $100,000 common.
Enemy interest: $24,480 common (24 per cent).
Number of directors: Six.
A. P. C. director: Gavin McNab, Merchants National Bank Building, San Francisco, Calif. (May 13, 1919).

Harwick Bronze Powder Co.

(Importing Bronze Powder.).

Address: Care of United States Bronze Powder Co., 220 West Forty-second Street, New York City.
Authorized capital: $15,000 common.
Enemy interest: $10,000 common (66⅔ per cent.)
Number of directors: Three.
A. P. C. directors: J. Blake Kellogg, 120 Broadway, New York City (October 21, 1918); James R. Murphy, 31 Nassau, Street, New York City (October 21, 1918).

Heine & Co.

(Selling Agency of Heine & Co., of Leipzig, Manufacturers and Dealers in Chemicals, Essential Oils, etc.)

Address: 7 Platt Street, New York City.
Authorized capital: $100,000 common (accountant's report shows $250,000).
Outstanding: $70,000 common.
Enemy interest: $30,000 common (42 per cent).
Number of directors: Five.
A. P. C. directors: Henry L. Bizallion, president Gotham National Bank, New York City (May 20, 1919); Aaron J. Colnon, 233 Broadway, New York City (May 20, 1919); Larkin G. Mead, 110 West Forty-second Street, New York City (May 20, 1919).

International Haircloth Co. (Inc.).

(Manufacturing Interhano Horse-hair Interlinings and Fiber Cloth.)

Address: 334 Fourth Avenue, New York City.
Authorized Capital: $100,000 common.
Issued: $72,200 common.
Enemy interest: $34,000 common (47 per cent).
Number of directors: Five.
A. P. C. directors: Robert Adamson, 511 Fifth Avenue, New York City (Aug. 13, 1918); Lamar Hardy, Municipal Building, New York City (Aug. 13, 1918).

56 International Hide & Skin Co.

(Importers and Exporters of Hides, Skins, and Furs.)

Address: 59 Frankfort street, New York City.
Authorized capital: $100,000 common, $100,000 preferred.
Issued: $20,000 common, $100,000 preferred.
Enemy interest: 8,000 common (56 per cent), $60,000 preferred (60 per cent).
Number of directors: Three.
A. P. C. directors: Geo. H. Flinn, 17 Battery Place, New York City (May 14, 1919); Frank L. Crocker, 5 Nassau Street, New York City (May 14, 1919).

E. Jacob Land Co.

(Disposing of Property of the Heirs of Elias Jacob, Deceased.)

Address: Care of Theo. Thorner, Plaza Hotel, San Francisco, Calif.
Authorized capital: $1,500 common.

Enemy interest: $437.50 common (29 per cent).
Number of directors: Seven.
A. P. C. director: James E. Colston, Assistant United States Attorney, San Francisco, Calif. (May 19, 1919).

Victor Koechl & Co.

(Manufacturing and Selling Dyestuffs.)

Address: 34 Beach Street, New York City.
Authorized capital: $1,000 common.
Enemy interest: $500 common (50 per cent).
Number of directors: Three.
A. P. C. directors: Aaron J. Colnon, 115 Broadway, New York City (Mar. 13, 1919); Marcus S. Hottenstein, 120 Broadway, New York City (Jan. 13, 1920).

The Latouche Copper Mining Co.

(Mining of Copper Ore.)

Address: 13-15 White Street, New York.
Authorized capital: $300,000.
Enemy interest: $100,000 (33⅓ per cent).
Number of directors: Four.
A. P. C. director: George J. Corbett, 80 Broadway, New York (elected July 11, 1919).

Lock, Moore & Co. (Ltd.).

(Lumber.)

Address: Lockport, Calcasieu Parish, La.
Authorized capital: $100,000.
Enemy interest: $22,000 (22 per cent).
Number of directors: Not more than six nor less than five.
A. P. C. director: Frank Roberts, president Calcasieu National Bank, Lake Charles, La. (elected Jan. 21, 1919).

Lutz Shipping Co.

(Operation of Vessels.)

Address: Pensacola, Fla.
Authorized capital: $100,000.
Enemy interest: $100,000.
Number of directors: Three.
A. P. C. directors: Hollis N. Randolph, Atlanta, Ga.; E. R. Malone, Pensacola, Fla.; William L. Wilson, Millville, Fla. (All elected Apr. 19, 1918.)

57

Emil Majert Co.

(Importers of Wall Paper and Wall Decorations.)

Address: 9-11 East Thirty-seventh Street, New York.
Authorized capital: $50,000.
Enemy interest: $49,900 (98 per cent).
Number of directors: Three.
A. P. C. directors: H. O. Kilbourne; Z. S. Freeman; J. C. Tomlinson, 15 Broad Street, New York. (All elected July 24, 1918.)

Martini & Huneke Co. of America.

(Engineers and Machinery Manufacturers.)

Address: 1201 Hudson Street, Hoboken, N. J.
Authorized capital: $500,000.
Issued: $304,000.
Enemy interest: $107,500, 35 per cent.
Number of directors: Not less than five nor more than nine.
A. P. C. director: Harvey E. Molé, 55 Liberty Street (elected Aug. 16, 1918).

Marvin Estate Co.

(Real Estate Holding.)

Address: 24 California Street, San Francisco, Calif.
Authorized capital: $530,000.
Enemy interest: $142,700, 26.9 per cent.
Number of directors: Three.
A. P. C. director: Gavin McNab, Merchants National Bank Building, San Francisco, Calif. (elected July 29, 1918).
(Property to be returned under section 9 claims.)

Richard Mayer Co.

(Cotton and Cotton Waste.)

Address: 184 Summer Street, Boston, Mass.
Authorized capital: $200,000.
Enemy interest: $200,000.
Number of directors: Five.
A. P. C. directors: James C. Howe, Old Colony Trust Co., Boston, Mass. (elected June 24, 1918); Chandler M. Wood, 35 Congress Street, Boston, Mass. (elected June 24, 1918); Edward Lovering, 834 Exchange Building, Boston, Mass. (elected June 16, 1918); C. C. Payson, 18 P. O. Square, Boston, Mass. (elected June 16, 1918); B. Devereaux Barker, to be elected to fill vacancy existing on board.

The Monopole Champagne & Importation Co.

(Wholesale Liquors.)

Address: 80 Maiden Lane, New York.
Authorized capital: $50,000.
Issued: $30,300.
Enemy interest: $30,200, 99.5 per cent.
Number of directors: Six.
A. P. C. directors: Charles S. Hallowell, 461 Fourth Avenue, New York; Joseph Healy, 165 Broadway, New York; F. Clarke Thompson, 120 Broadway, New York; Rufus C. Finch, 82 Sullivan Street, New York; Guy P. Dean, 1133 Broadway, New York. (All elected June 28, 1918.)

Robert Muller & Co.

(Manufacturers of Hatbands and Novelties.)

Address: 22 Washington Place, New York City.
Authorized capital: $25,000 common, $75,000 preferred.
Enemy interest: $16,600 common, 66 per cent; $33,400 preferred, 44 per cent.
Number of directors: Three.
A. P. C. directors: George F. Handel, 46 Cedar Street, New York; William K. La Bar, Stroudsburg, Pa. (Both elected Nov. 12, 1918.)

58 K. & E. Neumond (Inc.).

(Drying and Trading in Feedstuffs, Grain, etc.)

Address: 501 Elysian Field Street, New Orleans, La.
Authorized capital: $100,000.
Enemy interest: $93,900, 93.9 per cent.
Number of directors: Three.
A. P. C. directors: Mauritz Pyk (elected Feb. 4, 1918); George Denegre, 529 Common Street, New Orleans, La. (elected Jan. 12, 1920).

Northern Fur Co.

(Furs.)

Address: 318 North Main Street, St. Louis, Mo.
Authorized capital: $100,000 common, $30,000 preferred.
Issued: $80,000 common, $30,000 preferred.
Enemy held: $20,000 common, 25 per cent; $30,000 preferred (no voting power).
Number of directors: Three.
A. P. C. directors: Phillip B. Fouke, International Fur Exchange, St. Louis, Mo. (elected Oct. 5, 1918).

Otto Coking Co. (Inc.).

(Manufacture of Coke, Metal Coke Ovens, etc.)

Address: 469 Fifth Avenue, N. Y.
Authorized capital: $3,000,000.
Issued: $156,600.
Enemy interest: $156,600.
Number of directors: Seven.
A. P. C. directors: E. A. Breed, 30 Church Street, N. Y.; Walter C. Webster, 25 Broad Street, N. Y.; E. P. Earle, 165 Broadway, N. Y.; J. Ennis McQuail, 1 Broadway, N. Y.; Joseph S. Qualey, 25 Pine Street, N. Y.; S. B. Thorne, 17 Battery Place, N. Y.; M. F. Millikan, 30 Church Street, N. Y. (All elected Sept. 26, 1918.)

Otto Estate Co.

(Dealers in Real Estate.)

Address: 311 San Marcos Building, Santa Barbara, Calif.
Authorized capital: $18,000.
Enemy interest: $18,000.
Number of directors: Three.
A. P. C. directors: William G. Griffith, Santa Barbara, Calif.; S. B. Schauer, Santa Barbara, Calif.; Alfred Edwards, Santa Barbara, Calif. (All elected July 27, 1918.)

Otto Gas Engine Works.

(Manufacture of Gasoline and Oil Engines.)

Address: Thirty-third and Walnut Streets, Philadelphia, Pa.
Authorized capital: $2,500,000.
Outstanding: $214,200.
Enemy interest: $214,200.
Number of directors: Three.
A. P. C. directors: Joseph M. Feaster, 315 Liberty Building, Philadelphia, Pa.; Vincent A. Carroll, 315 Liberty Building, Philadelphia, Pa.; Chas. A. Wigmore, Juniper and Cherry Streets, Philadelphia, Pa. (All elected July 18, 1918.)

Pacific Mildcure Co.

(Packers, Dealers in Salt and Smoked Fish.)

Address: 505 Central Building, Seattle, Wash.
Authorized capital: $80,000.
Enemy interest: $80,000.
Number of directors: Three.
A. P. C. directors: H. D. Folsom, jr., 506 Central Building, Seattle, Wash. (elected May 9, 1919). C. A. Philbrick, First National Bank, Seattle, Wash. (elected May 21, 1919).

59 Park Hill Land Co.

(To Conduct a Real Estate Business.)

Address: Wauwatosa, Milwaukee, Wis.
Authorized capital: $250,000.
Enemy interest: $83,266,67, 33⅓ per cent.
Number of directors: Three.
A. P. C. directors: William C. Quarles, Sentinel Building, Milwaukee, Wis. (elected Aug. 27, 1919).

Payette Land & Improvement Co.

(Selling of Real Estate.)

Address: Payette, Idaho.
Authorized capital: $150,000.
Enemy held: $122,000, 81.3 per cent.
Number of directors: Five.
A. P. C. directors: C. W. Giesler, Payette, Idaho (elected Oct. 15, 1918). E. C. S. Brainard, Payette, Idaho (elected Oct. 15, 1918). M. E. Wood, Payette, Idaho (hold over representing A. P. C.).

Petag Breslin Co.

(Importers of Oriental Rugs.)

Address: 212 Fifth Avenue, New York.
Authorized capital: $100,000.
Enemy held: $99,000, 99 per cent.
Number of directors: Six.
A. P. C. directors: Charles R. Gibson, 200 Fifth Avenue, New York; James A. Dingwall, 66 Leonard Street, New York; C. L. Anderson, 63 Leonard Street, New York; Preston M. Brock, care of Brigham-Hopkins Co., Fifth Avenue Building, New York; William Menke, 225 Fourth Avenue, New York. (All elected Nov. 18, 1918.)

John Rath Cooperage Co.

(North Kilpatrick and West North Avenue, Chicago, Ill., Cooperage Business, Manufacture of Barrels.)

Authorized capital: $36,000.
Enemy interest: $18,000, 50 per cent.
Number of directors: Three.
A. P. C. director: Lucius Teter, Chicago Savings Bank & Trust Co. (elected May 1, 1918).

Rattan & Cane Co.

(Manufacturing Cane.)

Address: 66 West Broadway, New York.
Authorized capital: $10,000.
Enemy interest: $10,000.
Number of directors: 3.
A. P. C. directors: Gilbert Kinney, 242 Madison Avenue, New York; J. B. Pruyn, 2 Rector Street, New York; Arthur Vernay, 12 East Forty-fifth Street, New York. (All elected June 17, 1918.)

Roechling Electro Steel Co. (Inc.).

(Buying and Selling Steel.)

Address: 175 Lafayette Street, New York.
Authorized capital: $30,000.
Enemy held: $30,000.
Number of directors: 3.
A. P. C. directors: Edward M. McIlvain, 120 Broadway, New York; Edward M. Sawtelle, 5 Beekman Street, New York; Paul R. Towne, 258 Broadway, New York. (All elected May 23, 1918.)

60 Romanoff Caviar Co.

(Purchasing, Selling, Packing, Preserving, and Otherwise Dealing in Domestic and Foreign Caviar.)

Address: 170 Chambers Street, New York.
Authorized capital: $500.
Enemy interest: $300, 60 per cent.
Number of directors: Three.
A. P. C. directors: E. Everett Rowell, 68 Bedford Street, Stamford, Conn.; William F. Koehan, Washington, D. C. (Both elected July 30, 1919.)

Roselle Mining Co.

(Mining.)

Address: 1018 Paulsen Building, Spokane, Wash.
Authorized capital: $500,000.
Enemy interest: $337,766, 67.5 per cent.
Number of directors: Five.
A. P. C. directors: Hugh W. Sanford, chief of Tungsten Division, War Industries Board, Washington, D. C.; Fred E. Baldwin, Spokane, Wash.; George Turner, Spokane, Wash.; R. L. Rutter, Spokane, Wash. (Last three elected Nov. 15, 1918.)

Rosco Trading Co.

(General Exporting and Importing Company.)

Address: 66 Leonard Street, New York City.
Authorized capital: $200,000 common, $800,000 preferred.
Issued: $110,000 common, $400,000 preferred.
Enemy interest: $75,700 common, 68.8 per cent; $244,000 preferred, 61 per cent.
Number of directors: Seven.
A. P. C. directors: Thos. Hassett, 15 Park Row, New York; William W. Mein, 43 Exchange Place, New York; John Whalen, 206 Broadway, New York; Harry T. Hall, Merchants National Bank; Charles L. Fellows, East Stroudsburg, Pa., (the five elected Mar. 24, 1919); Larkin G. Meade (elected Apr. 9, 1919).

Russ Estate Co.

(Renting Out Offices and Stores in Russ Building.)

Address: 255 Montgomery Street, San Francisco, Calif.
Authorized capital: $1,050,000.
Issued: $1,030,000.
Enemy held: $220,000, 21.3 per cent.
Number of directors: Five.
A. P. C. director: John W. Preston, 1105 Hobart Building, San Francisco (elected Aug. 19, 1919).

Russian Caviar Co.

(Importing, Exporting, etc., Caviar of all Kinds.)

Address: 170 Chambers Street, New York.
Authorized capital: $10,000.
Enemy held: $7,000, 70 per cent.
Number of directors: Three.
A. P. C. directors: Everett G. Rowell, 68 Bedford Street, Stamford, Conn.; William F. Koehan, Washington, D. C. (Elected July 30, 1919.)

Rudolph Saenger Co.

(Dealers in Silk Goods and Veilings.)

Address: 239 Fourth Avenue, New York City.
Authorized capital: $3,000.
Enemy interest: $2,700 (90 per cent).
Number of directors: Five.
A. P. C. directors: F. C. Wilcox, 641 St. Marks Avenue, Brooklyn (Mar. 28, 1919); W. B. Wilson, 130 Fifth Avenue, New York (Mar. 28, 1919); E. Everett Rowell (Apr. 15, 1920).

61 Schliemann's Oil & Ceresine Co. (Inc.).

(Dealers in Waxes and Oils.)

Address: 25 Beaver Street, New York City.
Authorized capital: $10,000.
Enemy interest: $9,500 (95 per cent).
Number of directors: Three.
A. P. C. directors: George H. Gibson, 142 East Thirty-third Street, New York (Nov. 14, 1919); George S. Hier, 277 Broadway, New York (Nov. 14, 1919).

Peter Schoenhofen Brewing Co.

(Brewing of Beer and Other Drinks.)

Address: 526 West Eighteenth Street, Chicago, Ill.
Authorized capital: $1,000,000 common, $1,200,000 preferred.
Issued: $917,500 common, $1,117,500 preferred.
Enemy interest: $564,000 common (61.4 per cent), $587,900 preferred (52.6 per cent).
A. P. C. directors: Thomas J. Webb, 624 West Randolph Street, Chicago, Ill. (Mar. 11, 1918); T. J. Healey, Southwest Trust & Savings Bank, 35 Archer and Hoyne Avenues, Chicago, Ill. (Mar. 11, 1918); R. B. Upham, Peoples Trust & Savings Bank, Chicago, Ill. (Mar. 10, 1919).

Schoenhofen Co.

(Distributors of Soft Drinks.)

Address: 526 West Eighteenth Street, Chicago, Ill.
Authorized capital: $20,350.
Enemy interest: $11,520 (56 per cent).
Number of directors: Five.
A. P. C. directors (elected Mar. 22, 1919): Thomas J. Webb, 524 Randolph Street, Chicago, Ill.; Thomas J. Healy, Southwest Trust & Savings Bank, Chicago, Ill.; Robert B. Upham, Peoples Trust & Savings Bank, Chicago, Ill.

Schutte & Koerting Co.

(Shipbuilding Machinery, Manufacture of.)

Address: Twelfth and Thompson Streets, Philadelphia, Pa.
Authorized capital: $100,000 common, $300,000 preferred.
Enemy interest: $100,000 common (100 per cent), $300,000 preferred (100 per cent).
Number of directors: Five.
A. P. C. directors: Charles S. Calwell, Corn Exchange Bank, Philadelphia, Pa. (Feb. 23, 1918); E. Pusey Passmore, governor Fed-

eral reserve bank, Philadelphia, Pa. (Feb. 23, 1918); Ralph J. Baker, Harrisburg, Pa. (Feb. 23, 1918); David S. Halstead (Mar. 1, 1918).

Seguranca Steamship Corporation.

(Shipping.)

Address: 41 Broadway, New York.
Authorized capital: $300,000.
Enemy held: $300,000.
Number of directors: Five.
A. P. C. directors: George H. Flinn, 17 Battery Place, New York; John Whalen, 206 Broadway, New York; George H. Gibson, 142 East Thirty-third Street, New York. Elected May 15, 1919.

Select Realty Co.

(Handling of Real Estate.)

Address: 140 Nassau Street, New York.
Authorized capital: $20,000.
Issued: $15,000.
Enemy interest: $14,800.
Number of directors: Three.
A. P. C. directors: Lyn G. Munson, 1110 West Forty-second Street, New York; A. J. Powers, Powers Lithographing Co., New York; Joseph F. McCloy, 56 Pine Street, New York. Elected June 14, 1918.

62 The Senefelder Litho Stone Co. (Inc.).

(Dealing in Lithographic Stones, etc.)

Address: 32 Green Street, New York.
Authorized capital: $30,000.
Enemy interest: $30,000.
Number of directors: Three.
A. P. C. directors: E. Frank Gaudineer, 209 Dyckman Street, New York (Apr. 11, 1919); Medad E. Stone, 75 Murray Street, New York (Apr. 11, 1919); Lewis Bechtold, 324 West End Avenue, New York (holdover).

Simon, Buehler & Bauman (Inc.).

(Importers and Manufacturers of Brewing and Dust-collecting Machinery.)

Address: 60 Wall Street, New York.
Authorized capital: $12,000.
Enemy held: $12,000 (100 per cent).
Number of directors: Three.

A. P. C. directors: Frank L. Patterson, 25 Church Street, New York; Elias van der Horst, 18 Old Slip, New York; James T. Terry, 60 Wall Street, New York. Elected July 31, 1918.

NOTE.—In litigation. Claim filed under section 9 for return of property.

R. & H. Simon Co.

(Silk Manufacturers.)

Address: 540 Gardner Street, Union Hill, N. J.
Authorized capital: $1,935,000 common, $100,000 preferred.
Enemy interest: $350,000 common (18 per cent); $100,000 preferred (100 per cent); no voting power.
Number of directors: Seven.
A. P. C. directors: David B. Skillman, 311 Easton Trust Building, Easton, Pa. Elected November 11, 1918.

Joseph Spiero Co. (Inc.).

(General Forwarders and Freight Contractors.)

Address: 350 Broadway, New York.
Authorized capital: $100,000.
Enemy interest: $66,666.66 (66⅔ per cent).
Number of directors: Three.
A. P. C. directors: Medad E. Stone, 75 Murray Street, New York. Elected May 28, 1919.

Stallforth & Co. (Inc.).

(Brokers.)

Address: 140 Broadway, New York.
Authorized capital: 5,000 shares common $500,000 preferred.
Enemy interest: 3,750 shares common (75 per cent); $50,000 preferred (10 per cent).
Number of directors: Three.
A. P. C. directors: E. A. Seasongood (May 3, 1918); Col. Douglas I. McKay, 30 Church Street, New York (Mar. 28, 1919).

Star Warehouse Corporation.

(Warehouse Business, Tobacco.)

Address: 1800 Semmes Avenue, Richmond, Va.
Authorized capital: $25,000.
Enemy interest: $24,850 (99 per cent).
Number of directors: Not less than three nor more than five.
A. P. C. directors: R. Grayson Dashiell, 621 Mutual Building, Richmond, Va.; R. L. Montague, 619 Mutual Building, Richmond, Va. Elected September 23, 1919.

63 Paul Stierle Co. (Inc.).

(Supplies and General Printers.)

Address: 56 Pine Street, Providence, R. I.
Authorized capital: $10,000.
Enemy interest: 9,800 (98 per cent.)
Number of directors: Three.
A. P. C. directors: George H. Holmes, William A. Shawcross, Crown Hotel, Providence, R. I.; Patrick P. Curran, care Comstock & Canning, 10 Wybosset Street, Providence, R. I.

Szilassy Investment Co.

(Investments, Real Estate.)

Address: 804 Chestnut Street, St. Louis, Mo.
Authorized capital: $5,000.
Enemy interest: $5,000 (100 per cent).
Number of directors: Three.
A. P. C. directors: John F. Lee, Rialto Building; Chas. M. Polk. Elected July 29, 1918.

Tin Products Co.

(Producing and Treating Tin and Other Metals.)

Address: 51 East Forty-second Street, New York.
Authorized capital: $250,000.
Enemy interest: $62,500 (25 per cent).
Number of directors: Four.
A. P. C. director: Thos. F. Crean. Elected October 2, 1918.

Topken Co.

(Importers of Kid and Fabric Gloves.)

Address: 257 Fourth Avenue, New York.
Authorized capital: $150,000.
Enemy interest: $120,000 (80 per cent).
Number of directors: Five.
A. P. C. directors (elected July 10, 1919): James H. Gannon, Ridgeway Co., Spring and MacDougal Streets, New York City; Nathan F. Giffen, 115 Broadway, New York; Daniel Neenan.

Transatlantic Import Co.

(Importing.)

Address: 156 Fifth Avenue, New York.
Authorized capital: $76,000.
Issued: $76,000.
Enemy interest: $76,000 (100 per cent).
Number of directors: Three.
A. P. C. directors (elected July 25, 1918); William F. Burt, 111 Broadway, New York; Thomas A. H. Hay, 341 Northampton Street, Easton, Pa.; D. G. Gale, jr., 2 Rector Street, New York.

Transatlantic Paper Co.

(Deal in All Kinds of Paper.)

Address: 50 Franklin Street, New York City.
Authorized capital: $25,000.
Enemy interest: $25,000 (100 per cent).
Number of directors: Three.
A. P. C. directors: Alexander Kenny, 110 West Forty-second Street, New York; A. W. Kelly, 71 Broadway, New York; Peter Tivnan, 235 West Twenty-third Street, New York.

64 Translating Trust Co.

(Banking.)

Address: 67 William Street, New York.
Authorized capital: $700,000.
Enemy interest: $537,000 (76 per cent).
Number of directors: Nine.
A. P. C. directors: Joseph A. Bower, Liberty National Bank, New York (Mar. 12, 1918); William R. Barbour, 22 William Street, New York (Mar. 12, 1918); Frank S. Hastings, 80 Broadway, New York (Mar. 12, 1918); John F. Calhoun, 200 West Seventy-second Street, New York (Mar. 12, 1918); Ernst Stauffen, jr., Liberty National Bank, New York (July 9, 1918); James A. Delehanty, 110 West Forty-second Street, New York (July 9, 1918); Sterling W. Childs, 25 Nassau Street, New York (July 9, 1918); William H. English, 120 Broadway, New York (July 9, 1918); L. G. Munson (Jan. 7, 1919).

Tropon Works.

(Manufacture of Proprietary Medicines.)

Address: 81 Fulton Street, New York.
Authorized capital: $35,000.
Issued: $18,900.

Enemy interest: $17,100.
Number of directors: Five.
A. P. C. directors: Gilbert Kinney, 244 Madison Avenue, New York (July 10, 1918); Larkin G. Mead, 63 Park Row, New York (July 10, 1918); Guy P. Dean, 1133 Broadway, New York (July 10, 1918); J. Ennis McQuail, 1 Broadway, New York (July 10, 1918); Lawrence McGuire, 115 Broadway, New York (July 10, 1918).

Victor Balata & Textile Belting Co.

(Manufacture of Belting.)

Address: 38 Murray Street, New York.
Authorized capital: $100,000.
Enemy interest: $33,333 (33⅓ per cent).
Number of directors: Three.
A. P. C. director: Parke H. Davis, 22 South Third Street, Easton, Pa. (Aug. 1, 1918).

E. K. Vietor & Co. (Inc.).

(Manufacturer and Dealer in Tobacco.)

Address: 1800 Semmes Avenue, Richmond, Va.
Authorized capital: $225,000.
Enemy interest: $224,850 (99 per cent).
Number of directors: Not less than three nor more than five.
A. P. C. directors: R. L. Montague, 619 Mutual Building, Richmond, Va. (Sept. 23, 1919); R. Grayson Dashiell, 621 Mutual Building, Richmond, Va. (Sept. 23, 1919).

Virginia Laboratory Co.

(Dealers in Chemicals and Chemical Products.)

Address: 51 East Forty-second Street, New York.
Authorized capital: $30,000.
Enemy interest: $10,000 (33⅓ per cent).
Number of directors: Three.
A. P. C. director: R. E. Fox, 32 West Fortieth Street, New York (Oct. 4, 1918).

John J. Von Berger Co.

(Estate Holding Company.)

Address: 408 Chronicle Building, San Francisco, Calif.
Authorized capital: $490,000.
Enemy interest: $280,000.
Number of directors: Three.
A. P. C. directors: Charles K. McIntosh, Bank of California, San Francisco, Calif.; Barnaby Conrad, Kohl Building, San Francisco, Calif. Elected August 21, 1919.

65 Von Schroeder Investment Co.

(Realty Investments.)

Address: 1212 Merchants' Exchange Bank Building, San Francisco, Calif.
Authorized capital: $200,000.
Enemy interest: $199,970 (99 per cent).
Number of directors: Three.
A. P. C. directors: Frank B. Anderson, Bank of California, San Francisco, Calif. (Feb. 19, 1919); Gavin McNab, San Francisco, Calif. (Feb. 24, 1919); Joseph K. Hutchinson, Bank of California, San Francisco, Calif. (Feb. 19, 1919).

Wawa Commercial Co. (Inc.).

(Logging Mahogany Lumber in Nicaragua.)

Address: 82 Wall Street, New York.
Authorized capital: 10,000 shares.
Enemy interest: 860 shares (8.6 per cent).
Number of directors: Five.
A. P. C. directors: Alexander S. Williams, Astoria, Long Island (May 5, 1919); John W. Hannon, 115 Broadway, New York (July 2, 1919).

E. Henry Wemme Co.

(Real Estate Holding Company.)

Address: 512 Corbett Building, Portland, Oreg.
Authorized capital: $100,000.
Enemy held: $91,666.66 (91⅔ per cent).
Number of directors: Three.
A. P. C. directors: Lotus L. Langley, Jackson Club, Portland, Oreg. (August 8, 1919); L. L. Mulit, Northwestern National Bank, Portland, Oreg. (August 8, 1919); Alfred P. Dobson, Yeon Building, Portland, Oreg. (Jan. 12, 1920).

M. Wollstein Mercantile Co.

(Liquor Dealing.)

Address: 1414 Grand Avenue, Kansas City, Mo.
Authorized capital: $15,000.
Enemy interest: $5,400 (36 per cent).
Number of directors: Five.
A. P. C. directors: W. T. Kemper, Southwest National Bank, Kansas City, Mo. (March 12, 1919); W. F. Helm, William F. Helm Commission Co., Kansas City, Mo. (Mar. 12, 1919).

The Chairman: We will be glad to hear Mr. Hanna now.

Statement of Mr. John Hanna, Special Assistant to the Attorney General, Department of Justice.

Mr. Hanna: Mr. Chairman, the alien enemies delivered to the War Department for internment during the war comprised substantially two classes, the more numerous class being the officers and seamen of the German merchant machine, approximately 2,500, and of those approximately 1,950 have returned to Germany. Of the internes arrested under individual presidential warrants and delivered to the War Department for internment, there were in all approximately 2,300. Of those approximately 850 have returned to Germany. Of the remainder, approximately 1,450, about 80 are included in the list of those who would be affected by the passage of the legislation which is proposed. Of the internes whose property was taken by the Alien Property Custodian and are listed in the memorandum furnished by Mr. Boggs, there are approxi-
66 mately 100, and of those about 20 have been returned to Germany. So that the legislation only affects about 80 internes. The department is gratified to know, too, that substantially all of the more troublesome internes have returned to Germany.

The Chairman: These 80 are expected to become American citizens?

Mr. Hanna: I can not answer that question. I know a considerable number of the younger men do expect to become American citizens. I take it some of the older men do not, but of those older men many of them had a long residence in the United States and were not even indirectly connected with the criminal activities of the German Government agents before we were in the war, although they were prominetly connected with German business interests in some cases. The department, as a matter of protecting the United States from a potential danger, felt justified in putting them in internment camps at the commencement of hostilities. Many of them have now been released from the internment camps for long periods.

The Chairman: Is there anyone else present who desires to make any statement?

Statement of Mr. Jesse S. Raphael, New York, N. Y.

Mr. Raphael: Mr. Chairman, I represent the firm of Feiner & Maass, 66 Pine Street, New York, who are attorneys for Mrs. Lydia H. Burgstaller, an American-born woman who married a German citizen shortly after the first declaration of war in August, 1914; and she would, under the provision as it now stands, be debarred from getting her property now in the hands of the Alien Property Custodian, amounting to $120,000. So I strongly urge upon the consideration of the committee the question as to whether or not the date on page 4, subdivision 3, of the bill, namely, August 4, 1914, ought not to be advanced to April 6, 1917, as was suggested by Mr. Garvan, the Alien Property Custodian, at a former hearing held by said committee.

It seems to me that where a woman married a citizen of Germany before this country declared war upon Germany her rights are just as much to be considered as those of one who married a German citizen before any declaration of war had been made, because in 1914, 1915, and 1916 we were as much at peace with Germany as we were with the other nations.

Then, again, on page 5 of the said subdivision it provides that the act operates "provided both of the contracting parties were living in the United States at the time of their marriage"; and I wish again to urge upon the committee the consideration of the situation as it exists in this particular case of the lady we represent here, who was married in Germany. She was traveling in Germany at the time and was married there. So I see no reason why the place of marriage would have any effect either on the loyalty of the woman or on her property rights. I know, for instance, that members of my regiment married French girls in France, and I understand that numbers of American soldiers married German women in the occupied portions of Germany, but yet no one would doubt their loyalty on that account. So here I do not think the question of the place of
67 marriage would materially affect the question as to whether or not the United States should continue to hold the property of this woman.

The particular lady we represent is in such dire straits that she asked us recently for food. She is unable to obtain any food, and we had to send her food and also send her a small amount of money. We sent her $500 a month ago. She is absolutely destitute. Her property is in the hands of the Alien Property Custodian and she is unable to reach any of it.

The Chairman: Mr. Boggs, what are your views with reference to the suggested amendment?

Additional Statement of Mr. Lucien H. Boggs.

Mr. Boggs: I am sorry, Mr. Chairman, but I was out of the room for a moment.

The Chairman: Mr. Rapnael wishes to bring the date from August 4, 1914, down to April 6, 1917, which was the date of the declaration of war; he also wishes to eliminate the provision that they must be at the time of their marriage living in the United States.

Mr. Boggs: From an administrative standpoint I do not think it would make any difference to either the Alien Property Custodian or the Department of Justice as to which of those dates is selected. The proof in one case would be as easy to make as the proof in the other. As far as the merit side of the matter is concerned, as indicated to you by Mr. Garvan, the department is neither the proponent nor the opponent of the legislation, and it is simply a question that addresses itself to the judgment of the committee as to which would be the better way from the standpoint of justice and equity.

The Chairman: Is there any point in the requirement that they be living in the United States?

Mr. Boggs: I really do not know about that, because I did not have any share in the drafting of those clauses at all, and I really do not know what the theory of the draftsman was on that particular point.

Mr. Winslow: It would make it broader rather than narrower.

Mr. Boggs: The requirement that the parties should live in the United States at the time of their marriage, I assume, was merely a safeguard to insure the fact that it was really an essentially American proposition all the way through. Some of these gentlemen who are primarily interested in that are here, and I think it would be entirely appropriate for them, to give you their views. I am not trying to avoid answering any questions, but I am really in ignorance of the basis of the draft of these clauses, except that from an administrative standpoint, either one of them would fit in with the plan of handling claims.

Statement of Mr. S. M. Stellwagen, Federal Reserve Board, Until Recently Attorney, Alien Property Custodian.

The Chairman: Do you know anything about it, Mr. Stellwagen?

Mr. Stellwagen: Mr. Chairman, as Mr. Boggs has just stated, the Alien Property Custodian is neither the proponent nor the opponent of this measure. As I understand the drafting of this pro-
68 vision, the words "that both the contracting parties were living in the United States at the time of their marriage" were put in by way of limitation. Probably it was thought that Congress might not wish to return a large amount of property to the wives of German and Austro-Hungarian subjects generally, merely because these women at one time had been citizens of the United States, whereas there might be certain meritorious classes of cases where Congress, in its own judgment, would return property belonging to such classes of individuals. This clause, of course, would limit the amount of property to be returned, because the contracting parties would have had to have lived in the United States to become eligible under this provision. If they were living here it might be taken as fairly good evidence that, as Mr. Boggs has said, it would be an American proposition throughout.

(Thereupon the committee adjourned.)

Statement Submitted by Hon. J. W. Harreld, a Representative in Congress from the State of Oklahoma.

May 29, 1920.

Hon. John J. Esch,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR SIR:

Confirming our conversation on the subject of your bill (H. R. 14208) and other measures pending before the Committee on Interstate and Foreign Commerce, I desire to urge that provision be made

for relief in a class of cases typified by the following information which has been brought to my attention.

This is the case of a woman, born in 1843, in the United States, descended from colonial stock and from men who served this country in the Revolution and subsequent wars, and a daughter of J. Pinckney Henderson, first governor of Texas, major general in United States Army during the War with Mexico, and later United States Senator.

In 1864 she married a Baron Preuschen and in consequence became an Austrian subject. Her husband died in 1903. Her mother, who died in the United States in 1897, bequeathed her an interest in a trust estate invested in this country. This was seized by the alien property custodian.

While the income from this fund is not large, Mrs. Fanny Preuschen Henderson, as she now calls herself, is, I understand, dependent on it for a living and without it is subject to actual want and privation.

If she were to return to the United States to live, she would under the act of 1907 recover American citizenship, as the martial relationship has ceased to exist, and she could then as a citizen ask for the return of her property.

But I understand that she is an invalid and for many years has been advised against risking the voyage and that it might mean her death. I have no doubt that ultimately her property will be restored. But her need of relief is immediate.

69 It does seem that this Government should not permit a deserving American-born woman like this to suffer for the necessities of life and, perchance, to die in consequence.

I urge most earnestly that your bill be amended so as to cover cases like this. That would be accomplished by adopting either of the following amendments:

One page 5, in subdivision (3), strike out the words "and that both of said contracting parties were living in the United States at the time of their marriage."

Or else, amend H. R. 14208 by adding, on page 5, a subdivision between (3) and (4) reading as follows:

A woman who at the time of her marriage was a citizen of the United States, and who prior to August 4, 1914, intermarried with a subject or citizen of Germany or Austria-Hungary, and whose marital relationship has ceased to exist but who because of physical infirmity is unable to return to the United States, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary.

Very truly, yours,

J. W. HARRELD.

Affidavit Submitted by Mr. Frank W. Arnold—Matter of Grace H. von Oertzen.

STATE OF NEW YORK,
County of New York, ss:

Katherine C. Burnett, being duly sworn, deposes and says that she resides at 126 East Twenty-fourth Street in the Borough of Manhattan, city of New York, and is a sister of the above-named, Grace H. von Oertzen; that deponent and said Grace H. von Oertzen are daughters of Henry Lawrence Burnett, deceased. Deponent further says that her father was born in the State of Ohio in 1838, and died in the city of New York, at his home, 7 East Twelfth Street; that her father resided in the State of Ohio about 35 years and came to the city of New York from Ohio.

Deponent further says that her father was in the Civil War, having enlisted when he was 19 years of age, and served until the end of the war; that at the end of the Civil War he was a brigadier general, attached to the One hundred and second Ohio Regiment; that deponent's father was married in Ohio to Katharine Cleveland Hoffman; that under the administration of President McKinley he was appointed district attorney for the southern district of New York, and upon the inauguration of Mr. Roosevelt was continued in said office; that he held the office of district attorney down to a few years before his death, the 4th day of January, 1916. That his daughter, above named, Grace H. von Oertzen, was born June 21, 1860, and was his first child; she lived with her father in Ohio and in New York during the early part of her life; that she was educated in this city, Paris, France, and Heidelberg, Germany, and while at school met Victor von Oertzen, whom she later married in 1878 at Paris, France, and who, at that time, was an officer of the German Army; her husband is still living and by brevet is a general in the German army; that she has not returned to the United States, but has lived continuously with her husband in Germany.

Deponent further says that her father, said Henry L. Burnett, died in this city on the 4th day of January, 1916, leaving a last will and testament, which was duly probated before the surrogate of Orange County, and in said will he made said Grace H. von Oertzen one of his legatees; that in due time her legacy of about $50,000 in cash and securities was paid and delivered by his executors to her attorney in fact, Frank W. Arnold, of 31 Nassau Street, New York City, and held by him for here benefit until the war began; that on the 15th day of February, 1918, upon the demand of the Alien Proper-Custodian, said legacy was paid by said Frank W. Arnold to A. Mitchell Palmer, Alien Property Custodian at that time.

Deponent further says that her father gave said Grace H. von Oertzen at her marriage $1,000 a year and continued to make
70 payments to her of $1,000 a year down to the date of his death. That deponent has received letters from her sister at different times; that said sister has been ill for the last year and is far from well and the present condition of her sister is pitiable.

Deponent knows her financial condition and knows that she has no income of her own and knows that she has only what she will receive from her father's estate, now in the hands of the Alien Property Custodian. Deponent further says that the said Grace H. von Oertzen's husband at the present time is 68 years of age, is in humble circumstances, and in feeble health. That he has no property, except a little home; that he and his wife, said Grace H. von Oertzen, live on the husband's half pay as a retired German officer, and the board paid to them by one boarder.

KATHARINE C. BURNETT.

Sworn to before me this 12th day of May, 1920.

MARY G. POTTER,
Notary Public, New York County, No. 136.

Commission expires March 30, 1922.

71 Filed May 25, 1922.

Wm. Tyler Page,
Clerk.

House of Representatives,
Clerk's Office,
Washington, D. C.

I, William Tyler Page, Clerk of the House of Representatives of the United States, hereby certify that the attached printed document captioned "House of Representatives, 66th Congress, 2d Session, Report No. 1089," and entitled "To amend trading with the enemy act" which was referred to the House Calendar and ordered to be printed June 2, 1920, is a true and correct copy of the original of said report.

In witness whereof I hereunto affix my name and the Seal of the House of Representatives of the United States this Twenty-third day of March, Anno Domini nineteen hundred and twenty-two.

[L. S.]

WM. TYLER PAGE,
Clerk of the House of Representatives.

The Clerk will file as part of record in Eq. 39726.

A. A. HOEHLING,
Justice.

72 House of Representatives.

66th Congress, 2d Session.

Report No. 1089.

To Amend Trading with the Enemy Act.

June 2, 1920.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Esch, from the Committee on Interstate and Foreign Commerce, submitted the following

Report.

[To Accompany H. R. 14208.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 14208) to amend section 9 of an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, having considered the same, report thereon with amendment and as so amended recommend that it pass.

The bill has the approval of the Departments of Justice and State, as will appear by the letters attached and which are made a part of this report.

Amend the bill as follows:

Strike out the word "the" in line 11, page 3, and insert the word "such" in lieu thereof.

In line 12, page 3, strike out the word "other."

Strike out all of line 12, page 3, after the word "property"; all of line 13 and all of line 14 up to the word "shall."

In line 1, page 4, substitute a comma for the semicolon after the word "States."

Strike out the words included in the brackets in lines 9 and 10, page 4.

Substitute the word "such" for "his" in line 11, page 4.

In line 17, page 4, strike out the date "August 4, 1914," and insert in lieu thereof the date "April 6, 1917."

In line 25, page 4, strike out the date "August 4, 1914," and insert in lieu thereof the date "April 6, 1917."

In line 1, page 5, strike out the comma after the word "Austria-Hungary" and the remainder of line 1, all of line 2, and all of line 3 up to the word "and."

Strike out the words included in the brackets in lines 4 and 5, page 6.

73 Strike out the words included in the brackets in lines 4 and 5, page 7.

After the word "part" in line 19, page 7, insert the following: "For the purposes of this section any citizen or subject of a State or

free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation."

The purpose of the above bill is to amend section 9 of the trading-with-the-enemy act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him under the provisions of the above act.

The following daily statement as of May 21, 1920, was presented to the committee by Mr. Lucien H. Boggs, special assistant to the Attorney General, and incorporated in the hearings. This statement shows the amount of property still held by the custodian and also the amount of cash deposited with the Secretary of the Treasury:

Daily Statement, Alien Property Custodian, May 21, 1920.

Total to date	$426,781,707.18
Claims paid and deducted per statement	88,471,284.88
Surrendered under voting trust	6,492,581.73
Enemy vessels seized by Government prior to trading with the enemy act	34,193,690.06
Total property seized	555,939,263.85

Summary.

Cash deposited with the Secretary of the Treasury:	
Invested	150,216,866.10
Uninvested	11,212,267.57
	161,429,133.67
Cash with depositaries	592,545.96
Stocks	104,478,202.13
Bonds, other than investments made by the Secretary of the Treasury	58,557,941.46
Mortgages	10,034,295.48
Notes receivable	2,155,881.56
Accounts receivable	20,836,607.07
Real estate	9,436,338.39
Miscellaneous general business, etc.	59,260,761.46
	426,781,707.18
Accounts opened to-day	0
Accounts previously opened	35,622
Accounts opened to date	35,622

Last report number opened on report register:

Yesterday	47,329
To-day	47,330
Increase	1

Number of trusts open on report register:

Yesterday	36,033
To-day	36,033
Increase	0

74 In view of the fact that 19 months have elapsed since the signing of the armistice and during this period an actual state of peace has existed, there have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian. This is true as to many women who were American citizens and who had married enemy aliens prior to our declaration of war April 6, 1917, and who were possessed of property not acquired directly or indirectly from any subject or citizen of Germany or Austria-Hungary.

Another class of claimants are interns who were taken from German merchant vessels and detained in internment camps in the United States. While most of these interns have returned to Germany about 100 of them have remained and will doubtless become citizens. The property thus taken over by the Alien Property Custodian belonging to them at the time of their internment amounted to approximately $2,000,000.

Another class consists of diplomatic or consular officers who were citizens or subjects of Germany or Austria or Hungary or Austria-Hungary at the time of the severance of diplomatic relations between the United States and such nations. In some instances their property was taken and is still being held by the Alien Property Custodian, notwithstanding that claims therefor have been made through diplomatic channels. The United States, while holding approximately $556,000,000 worth of private property which it found in this country belonging to individual citizens of enemy countries residing in their country at the outbreak of the war and still residing there, does not intend to confiscate this property. It was the intention of Congress when the property was taken that it should merely be held in custody during the war and that after the war the property or its proceeds should be returned to the owners. It has never been the purpose or the practice of the United States to seize the private property of a belligerent to pay our Government's claims against such belligerent. Such practice is contrary to the spirit of international law throughout the world. The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State. For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in

order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe. For these reasons the committee favorably reports the bill as above amended.

Office of the Attorney General.

Washington, D. C., March 31, 1920.

Hon. John J. Esch,
Chairman of the House Committee on
Interstate and Foreign Commerce,
Washington, D. C.

SIR:

The Secretary of State has written to me that this Government has recognized that the Provinces of Alsace and Lorraine have now become a part of France and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these Provinces who have acquired French nationality under the Versailles treaty of peace can not fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the trading with the enemy act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.

The Secretary of State also points out that this Government has recognized the Republics of Poland and Czechoslovakia and
75 the Kingdom of the Serbs, Croats, and Slovenes, and that for this Government to retain the property of persons who are citizens of those countries and resident within their borders would have a prejudicial effect upon the relations between the countries in question and the United States. The Secretary of State's recommendation was that any amendment to the trading with the enemy act should be broad enough to authorize the return of property belonging to citizens of these countries. He also felt that the amendment should cover the cases of residents of territory which may be allotted, under treaties yet to become effective, to an allied or associated power (as, for example, Trieste), as well as territory which, under plebiscites to be held in accordance with treaty provisions, may be allotted to a neutral country (as, for example, that portion of Schleswig which may be allotted to Denmark).

I am herewith forwarding to you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your convenience, I shall briefly analyze its provisions and indicate the change which it would make in existing law.

Section 9 has been divided into subsections. Subsection (*a*) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an "enemy of ally of enemy" as those terms are used in that act.

The first portion of subsection (*b*) provides for the relief of citizens of allied countries resident in territory which was occupied during the war by the armed forces of the enemy. Relief was extended to this class of persons in the amendment to section 9 contained in the general deficiency appropriation act approved July 11, 1919. The phraseology has been changed slightly to provide relief in a small number of cases which have been thought not covered by the amendment of July 11, 1919.

The next portion of subsection (*b*), which is the only important new matter covered by the proposed bill, provides for the return of property to all those whom the President determines to be citizens of a nation, State, or free city other than Germany or Austria-Hungary who, at the time their property was taken over by the Alien Property Custodian, were resident in territory belonging to Germany, Austria-Hungary, Bulgaria, or Turkey, which, by reason of treaty provisions, has since been incorporated within the territory of other States and nations or has been placed under the direction of the League of Nations. The amendment is so framed that it will apply to territorial changes which will result from peace treaties with Austria-Hungary, Bulgaria, and Turkey which have not yet become effective in Europe, as well as territorial changes growing out of future plebiscites. The territorial changes, however, must have been completed and must be in effect before they are made the basis for returning property under the proposed amendment.

Subsection (*c*) contains a new provision giving all those covered by subsection (*b*) the right to bring suit for their property in the manner provided for in subsection (*a*), which contains the original provisions of section 9.

Subsections (*d*) and (*e*) contain the same general provisions relative to the effect of section 9 which were in section 9 as originally enacted.

I am not in favor of piecemeal legislation dealing with enemy property, but I feel that the situation presented to me by the Secretary of State may call for special treatment in view of the effect of the present situation upon our foreign relations. The amendment to section 9 contained in the act of July 11, 1919, provided special relief for certain citizens of foreign countries. The last-mentioned amendment may be considered a precedent for giving special relief where our foreign relations would seem to require it.

I shall be glad to furnish you, on request, any further information at my command in connection with the inclosed bill.

Respectfully,

A. MITCHELL PALMER,
Attorney General.

Office of the Attorney General.

Washington, D. C., April 22, 1920.

Hon. John J. Esch,
United States Senate, Washington, D. C.

MY DEAR MR. ESCH:

I am in receipt of your letter of April 19 and regret to learn that through inadvertence, the copy of the legislation suggested to meet the views of the Department of State, was not inclosed in my letter of March 31. In the meantime, I have been informally advised by representatives of the State Department that it was expected that within the next few days the Secretary of State would submit some further suggestions which would alter to some extent the phraseology of the proposed legislation.

76 For this reason I shall defer for a few days the transmission of the proposed draft to you.

With kindest personal regards, I remain,
Sincerely,

A. MITCHELL PALMER.

Department of State,

Washington, May 5, 1920.

The Attorney General.

SIR:

I have the honor to refer to my letter of March 23, 1920, concerning an amendment to section 9 of the trading with the enemy act, authorizing the release of property taken over by the Alien Property Custodian belonging to enemy persons who, by virtue of the peace treaties, become citizens, subjects, or nationals of countries other than Germany, Austria, or Hungary. In addition to the classes of property referred to therein, I believe that any amendment to section 9 should also contain provisions permitting the return of all property which, at the time it was taken over by the Alien Property Custodian, belonged to nationals, citizens, or subjects of the United States, as well as those of neutral or friendly States and of Turkey and Bulgaria.

The various neutral and allied States whose nationals' property has been taken over by the Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or otherwise, for some time have been pressing for the release of such property. It appears that the Department of Justice has ruled that, under the trading with the enemy act in its present form, it is not in a position to release this property. During the actual conduct of hostilities it may have been advisable to retain such property. In view, however, of the cessation of hostilities, this department feels that the Government should no longer retain this property, even though a technical state of war

may still exist. To do so would undoubtedly create an unfavorable impression in the States concerned, and would be of no advantage to the United States in its negotiations with enemy countries.

With reference to Turkish and Bulgarian property, it may be stated that early in the war the Alien Property Custodian, upon the request of this department, agreed not to seize any such property. This request was based partly on the ground that American interests in Turkey and Bulgaria, particularly in the former, were, it appears, of a much greater value than the interests of Turkish and Bulgarian nationals in this country, and partly on other reasons of policy. American property, it seems, has not been taken over in either of those countries. In view of this, and since the United States has not been at war with Turkey and has not even severed relations with Bulgaria, the department feels that authority should be obtained for the release of any Turkish or Bulgarian property which, through inadvertence or otherwise, may have been taken over by the custodian, notwithstanding the assurances of his office that such property would not be seized.

In order that the practice of this Government should accord with international usage and in order that American diplomatic and consular property in enemy countries would be duly respected and not interfered wth, the department after the outbreak of the war requested the Alien Property Custodian to refrain from taking over enemy diplomatic or consular property or personal property and effects in this country by reason of the owners having been diplomatic or consular officers of an enemy State accredited to this Government at the time of severance of relations.

The custodian not only agreed to comply with this request but, it seems, informed the Swedish Legation in charge of Austrian interests in this country that he would not take over such property. It appears, however, that there have been several instances in which property of this nature has been taken over either through inadvertence or through a misunderstanding as to the former official status of its owner. The department feels very strongly that such property should be released but, to its embarrassment, has been unable so far to obtain favorable action on any application for its return. If, as it is understood to be the position of the Department of Justice, an amendment to the act is necessary before this can be done, I trust that the proposed amendment to section 9 will contain a provision authorizing the return of any enemy diplomatic or consular property or private property and effects in this country by reason of the owner having been accredited to this Government as a diplomatic or consular officer of an enemy state at the tme of the severance of diplomatic relations with the State of which he was a representative.

I have the honor to be, sir,

Your obedient servant,

BAINBRIDGE COLBY.

77 Office of the Attorney General.

Washington, D. C., May 11, 1920.

Hon. J. J. Esch,
Chairman Committee on Interstate and
Foreign Commerce, House of Representatives.

SIR:

Referring to my letter of March 31, concerning certain legislation amendatory to section 9 of the trading with the enemy act to be submitted to your committee at the suggestion of the Secretary of State, as stated to you in my letter of April 22, through inadvertence the draft of the proposed legislation was not inclosed in the letter of March 31, and thereafter the Secretary of State requested that the matter be held up so that certain additional relief, which he considered necessary to give, might be incorporated in the proposed amendment. These suggestons he has since furnished to me, and the inclosed draft of a bill, amending section 9, has been drawn with a view to meeting these suggestions. I am also inclosing a copy of his letter to me, dated May 5, 1920, in order that your committee may have the benefit of the information which it contains.

The relief called for by this letter required extensive changes in the text of the bill which was designed to accompany my letter of March 31, and accordingly I will reanalyze its provisions, and indicate the change which it would make in existing law.

Section 9 has been divided into subsections.

Subsection (*a*) is identical with the present provisions of section 9 of the trading with the enemy act, as amended July 11, 1919, except as follows:

(1) The portion of said section now in force dealing with the return by the President of property belonging to a person who was found to be an enemy solely by reason of residence in territory occupied by the enemy has been stricken, the relief covered thereby being afforded by subsection (*b*) of the proposed bill.

(2) The second paragraph of section 9 as now in force is reenacted as subsection (*e*) of the proposed bill.

(3) The third paragraph of said section as now in force is reenacted as subsection (*f*) of the proposed bill.

(4) In each instance where reference is made to property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, in section (*a*) of this proposed draft, the phrase is added: "or seized by him." This is to cover the fact that under the amendment to the trading with the enemy act incorporated in the deficiency appropriation act approved November 4, 1918, the power to seize property was specifically conferred upon the Alien Property Custodian. This department in passing upon claims has held that the language of the present act was sufficiently broad to authorize the return of property seized by the custodian as well as that which had been conveyed, or paid to him. In order to set at rest any possible doubts on this point, however, it was deemed advisable to cover the question specifically in the proposed amendment.

Subsection (*b*) of the proposed amendment provides, in substance, for the return of all enemy property, except that held by persons who are in fact bona fide subjects, or citizens of Germany, Austria, or Hungary.

Under subdivision (1) thereof will be permitted the return of property to all American citizens, wherever resident, to citizens of Turkey and Bulgaria, and to persons whose property was sequestrated because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries).

Subdivisions (2) and (4) are concerned with the return of diplomatic and consular property, whether belonging to the Governments of the enemy nations, or to the individuals who represented them in this capacity, but in the latter event, the return is limited to such as is in this country because of the official position of the owner.

Subdivision (3) returns any property of the Governments of Bulgaria or Turkey. With reference, in general, to Bulgarian and Turkish property, it was determined early in the war that it would be inadvisable as a matter of policy for the Alien Property Custodian to exercise the right which the statute conferred upon him to take property of Bulgarians and Turks, and assurances to that effect were furnished by the State Department which resulted in American property being respected in those countries. Accordingly, it is now suggested that Bulgarian and Turkish property be returned, thus rectifying the few cases in which such property was taken by the custodian prior to the giving of these assurances by the State Department, or subsequently through mistake.

The proviso, appearing at the end of the fourth subdivision, is designed to insure the like rights of return of property to former citizens of the Central Empires, who, by virtue of the changes in territory wrought by the war, have now become, or shall hereafter become, bona fide citizens of a neutral or friendly power.

78 Subsection (*c*) provides that the persons to whom the President is authorized to extend relief by subsection (*b*) may also have rights of return of their property by filing claims or suits therefor.

Subsection (*d*) preserves to the nonenemy heirs or distributees of a deceased person the rights which he might have, if alive, to procure the return of his property.

Subsections (*e*) and (*f*) are contained in the act as it now exists, and no change is made in respect to them, except the prefixing of the letters which designate them.

I have submitted this draft of proposed legislation to the Alien Property Custodian, who authorizes me to state that he has no objection to its enactment.

Any further information that your committee may desire I will be glad to furnish.

Respectfully,

A. MITCHELL PALMER.

Department of State.

Washington, May 21, 1920.

Hon. John J. Esch,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

SIR:

The Attorney General has informed me that on May 11, 1920, he submitted to you a draft of an amendment to section 9 of the trading with the enemy act, permitting the return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral States, and States associated with this Government in the World War, as well as to persons who have or will, in pursuance of treaty provisions, become citizens or subjects of such States, for example Alsace-Lorraine, or citizens or subjects of new States which have been recognized by this Government, such as Poland and Czechoslovakia.

The draft, it is understood, is largely based on representations from this department, made in view of the fact that the Attorney General holds that under the trading with the enemy act, in its present form, he is unable to release property to owners, who when it was taken over were included, for any reason, in the terms "enemy" or "ally of enemy," as used in the act and consequently, in spite of strong representations by various neutral and associated Governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property. I hope that it will be possible to give favorable consideration to the matter, and that an amendment of the act can be passed before the recess of Congress.

In this connection, it may be stated that the early return of their property to citizens of Poland, Czechoslovakia, and other countries devastated by the war, would, especially in view of the exceedingly favorable rate of exchange, be of material assistance toward the economic and financial rehabilitation of those countries.

I have the honor to be, sir,

Your obedient servant,

BAINBRIDGE COLBY.

79 *Final Decree.*

Filed May 25, 1922.

* * * * * * *

Upon consideration of the bill of complaint filed herein, together with the motion to dismiss the same filed by the defendants, and

upon the arguments and briefs of counsel for all parties, and plaintiffs having elected in open Court to stand upon their bill of complaint, it is by the Court this 25th day of May, 1922.

Adjudged, ordered and decreed that the bill of complaint be and the same hereby is dismissed with costs to be taxed against the plaintiffs.

A. A. HOEHLING,
Justice.

From the foregoing decree plaintiffs in open court noted an appeal to the Court of Appeals of the District of Columbia, and the amount of the bond for costs is fixed at $100.00 or in lieu thereof a cash deposit of $50.00.

A. A. HOEHLING,
Justice.

Memorandum.

May 26, 1922.—$50 deposited by plaintiff in lieu of appeal bond.

80 *Assignment of Errors.*

Filed May 31, 1922.

* * * * * * *

The plaintiff herein makes the following assignment of errors herein, viz:

1. The court erred in holding in effect that it did not appear from the facts alleged in the bill of complaint herein that the debt which the plaintiffs are seeking to recover arose with reference to moneys or other property held by the Alien Property Custodian or the Treasurer of the United States under the provisions of and within the meaning and intent of "An Act to Define, Regulate and Punish Trading with the Enemy, and for Other Purposes, Approved October 6, 1917," as amended by an Act of Congress to Amend Section 9 of said Act, which amending Act was approved June 5, 1920 and commonly known and hereinafter referred to as the "Trading with the Enemy Act."

2. The court erred in holding in effect that it must be shown in the bill of complaint, and that it was not shown therein, that some specific legal relation existed between the debt which the plaintiff is seeking to recover and the money held by the Alien Property Custodian, either/or (1) that the proceeds of the transaction, resulting in the debt sought to be collected, should be specifically traced into the "money or other property held by the Custodian," or (2) that there should exist some executory contract of purchase or sale directly affecting the money or property, so that it could immediately be seized under some process like a writ of replevin, or (3) that there should be a specific lien upon the money or prop-

81 erty such as a vendor's lien, a lien created by pledge or mortgage, whether specific or equitable, or some kind of statutory lien.

3. The court erred in holding in effect that the right of the Banco Mexicano, under the law of the State of New York and upon the facts alleged in the bill of complaint, to bring a suit and obtain a judgment in said state against the Deutsche Bank, was not a remedy which gave such security for said debt, that within the meaning of the Trading with the Enemy Act, the debt arose with reference to the moneys or other property held by the custodian.

4. The court erred in that it held in effect that the plaintiffs herein have not set forth facts sufficient to entitle them to equitable relief under Section 9 of the Trading with the Enemy Act, as amended.

5. The court erred in dismissing the complaint herein.

6. The court erred in entering judgment dismissing the complaint herein.

CADWALADER, WICKERSHAM & TAFT,
BUTLER & KRATZ,
Attorneys for Appellants.

Designation of Record.

Filed May 31, 1922.

* * * * * * *

The Clerk will please prepare transcript of record to consist of the following:

1. Bill of Complaint.
2. Motion to Dismiss.

82 3. Answer of Deutsche Bank.

4. Printed document captioned, "House of Representatives, 66th Congress, 2nd Session, Report No. 1089," and entitled "To Amend Trading with the Enemy Act," which was referred to the house calendar; and ordered to be printed June 2, 1920, together with Certificate of the Clerk of the House of Representatives attached thereto, dated March 23, 1922.

5. Printed document captioned "Trading with the Enemy Act," being the hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, 66th Congrss, 2nd Session, on the bill H. R. 14208 and dated May 25, 1920, together with certificate attached thereto of the Clerk of the House of Representatives.

6. Memorandum opinion of Court.
7. Final Decree.
8. Memorandum of Appeal Bond or deposit.
9. Assignment of Errors.
10. Designation of Record.

CADWALADER, WICKERSHAM & TAFT,
BUTLER & KRATZ,
Attorneys for Appellants.

83 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 82, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39726 in Equity, wherein The Banco Mexicano de Commercio e Industria et al. are Plaintiffs and Deutsche Bank, a corporation, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of June, 1922.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

L. M. G./E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3838. The Banco Mexicano de Commercio e Industria et al., appellants, vs. Deutsche Bank, etc., et al. Court of Appeals, District of Columbia. Filed Jun- 21, 1922. Henry W. Hodges, clerk.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

ARGUMENT OF CAUSE

Friday, December 15th, A. D. 1922.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was commenced by Mr. Henry W. Taft, attorney for the appellants, and was continued by Mr. Adna R. Johnson, Jr., attorney for the appellees, and was concluded by Mr. Henry W. Taft, attorney for the appellants.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Van Orsdel, Justice, and Martin and Smith, Judges, U. S. Court of Customs Appeals

OPINION—Filed May 7, 1923

Mr. VAN ORSDEL delivered the opinion of the court.

Appellants, plaintiffs below, filed a bill in equity in the Supreme Court of the District of Columbia under Section 9, sub-section (*a*) of the Act of Congress approved June 5, 1920, 41 Stats. L. 977, amending the Trading with the Enemy Act of October 6, 1917, 40 Stats. L. 411. The suit is to recover the sum of $500,000, with interest, from the proceeds of property seized by the Alien Property Custodian.

It is averred that plaintiff bank, for convenience hereafter referred to as the Mexican bank, is a Mexican corporation with its principal place of business in the City of Mexico; that plaintiffs de Lima and Parkinson, citizens of the United States, and Cardona, a citizen of Mexico, are liquidators of the Mexican bank; that defendant bank, for convenience referred to as the German bank, is a German corporation with its principal place of business in the City of Berlin, and that the German bank maintains an office in New York City for the purpose of transacting its banking business in the United States.

It is further averred that plaintiff liquidators, or their predecessors in office, by authority of the laws of Mexico and on behalf of the Mexican bank, on December 15, 1916, loaned to the German bank 500,000 gold dollars for six months at 5% interest per annum; and that the loan was made by paying the amount thereof to the

agent of the German bank in New York City, who deposited it with the Guaranty Trust Company of New York to the credit of the general account which the German bank then had with that institution. The loan was made in New York City, payable there in United States gold dollars.

Averment is made of the declaration of war between Germany and the United States on April 6, 1917, the seizure of all the moneys, securities, and property of the German bank in the United States by the Alien Property Custodian, and the demand by plaintiff- for payment of the $500,000, with interest, as provided in the Trading with the enemy Act.

As a basis for the present action, it is averred that the money loaned was never transferred from the United States, but constituted a part of the balance of the deposits and securities seized by the Alien Property Custodian; that the securities and property taken over by the Custodian, after payment of all other claims and demands to which they lawfully may be applied, are sufficient to satisfy the claim of plaintiffs; that during the period between December 15, 1916 and the date when the property was seized and taken over, sufficient funds and property were kept on hand to pay and discharge all debts and obligations of the German bank in this country, including the claim of plaintiffs, and that plaintiffs' claim would have been discharged at maturity if war had not intervened.

Defendants moved to dismiss the bill for the reason—one, that claimants are "other than citizens of the United States;" two, that the debt did not arise with reference to any money or property held by defendants under Section 9 of the Trading with the enemy Act as amended.

From a decree dismissing the bill this appeal was taken.

Section 9 of the Act of October 6, 1917, as amended by the Act of June 5, 1920, provides in sub-section (*a*), among other things, as follows: 'That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: Provided, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right,

title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, * * * to establish the interest, right, title, or debt so claimed."

The present case turns upon the construction of sub-section (*e*) of Section 9, as amended, which reads as follows:

"No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

It is clear from the averments of the bill that when the loan was made the German bank became the debtor of plaintiffs, and when the German bank in turn deposited the proceeds of the loan with the Guaranty Trust Company the company became the debtor of the German bank, hence, in each transaction the relation of debtor and creditor was established. It must also be conceded that the Mexican bank, the plaintiff in interest, is not a citizen of the United States. The case, therefore, turns upon the single proposition whether the debt arose with reference to the money or property seized by the Alien Property Custodian.

There is nothing to indicate that the contract between the two banks placed any limitation upon the disposition which the German bank might make of the borrowed money after it was delivered to it. It was free to send the money out of the country, to deposit it to its credit in a bank, as was done, or use it in any manner that it might see fit. The transaction imposed no duty upon the German bank either contractual, moral, or by commercial custom, except to repay the loan when due according to its terms.

The original purpose of the Trading with the enemy Act was to cripple Germany and Austria-Hungary, and to deprive them as far as possible of the money and means to carry on the war. It was, however, the expressed policy of the United States not to confiscate or expropriate the property of the enemy; and it was likewise the policy to respect the interest, right, or title of any persons other than Germans and Austrians to money, property and claims which had come into the possession of the Alien Property Custodian. Under the original Act and the various amendments thereof, the way was

open to any person not an enemy or ally of enemy, to make claim to any money or other property to which he could assert an interest, right, or title.

But there was another class of claimants protected by sub-section (*a*) including those "to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him." It will be observed that these rights, like the rights of persons having a direct claim upon the money or property, extended to all claimants who were non-enemy persons, regardless of their nationality or place of residence, and regardless of the place where or manner in which the debt or obligation arose.

It appears, therefore, that by sub-section (*a*) remedies were afforded persons with two classes of claims. First, "any person not an enemy or ally of enemy claiming any interest, right, or title, in any money or other property" in the hands of the Alien Property Custodian; and second, "any person to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof" had been taken over and held by the Alien Property Custodian. Had the legislation stopped there the Mexican bank would have had a clear right of action under the second provision of sub-section (*a*).

But Congress by adding sub-section (*e*) to the amended Act of June 5, 1920, placed a limitation upon the right to recover a mere debt, limiting that right to citizens of the United States unless the debt "arose with reference to the money or other property held by the Alien Property Custodian." The sole question presented in the present case is whether the debt held by the Mexican bank against the German bank arose with reference to the property of the latter held by the Custodian. The word "debt" is used indifferently in these provisions to designate the obligation of the debtor and the claim of the creditor.

It is the contention of counsel for appellants that if sub-section (*e*) be so construed as to limit the right of recovery by a foreign creditor to the payment of debts, secured by a lien on money in the hands of the Alien Property Custodian, or to the return of money or property owned by the claimant, or clothed with a trust or other interest or property right in his favor, then it amounts to nothing more than a useless reiteration of paragraph (*a*), or the granting of a right already conceded.

We are not impressed by this construction of the statute. The foregoing argument rests upon a misconception of the nature and office of the contrasted sub-sections. Sub-section (*a*) is an enabling enactment granting certain remedies to certain parties, while sub-section (*e*) is a limiting or restrictive enactment designed to cut down the provisions of sub-section (*a*). It is wholly incorrect, therefore, to say that sub-section (*e*) would, under any circumstances, provide for a mere duplication of the remedy provided for in the first two lines of sub-section (*a*), since sub-section (*e*) does not in fact provide any remedy at all. It simply limits or restricts a remedy which is already provided for by sub-section (*a*). Therefore the

Government's contention does not convert (*e*) into a mere duplication of (*a*), but makes (*e*) limit and restrict (*a*), which is plainly what Congress intended.

By the limitation placed by sub-section (*e*) upon the right of recovery of a mere debt, limiting that right to citizens of the United States unless the debt arose with reference to the money or other property held by the Custodian, it was intended to exclude foreign creditors from asserting claims against the moneys or property in the hands of the Custodian unless they could assert an interest, right, or title therein, or the debt sought to be satisfied arose with reference to money or other property held by the Custodian. There are conceivable instances where in a plain case of debt, without title or lien against the money or property, the debt might arise with reference to the money or other property taken over by the Custodian. For example, if the money seized was identically the same money which furnished the basis of the debt, or if the money had been loaned and used for the specific purpose of purchasing property which had been seized by the Custodian, the debt might have such reference to the money or property as to permit of suit by an alien. But that is not this case. This is a plain case of debtor and creditor between the German and Mexican banks. The transaction has left no earmarks on any of the moneys or property in the possession of the Custodian. It follows, therefore, that the limitation contained in sub-section (*e*) operates to deprive the plaintiffs of any right of action.

Attention has been called to the report of the House Committee on Interstate and Foreign Commerce in charge of the bill which became the Act of June 5, 1920. From the report and the communications from the Attorney General's Office and the State Department to which reference is made in the report of the Committee, it might be inferred that Congress in this Act had in mind the granting of a right of action for debts incurred in this country whether the claimants be citizens or aliens. If Congress had this intention it could have been expressed in the Act, but inasmuch as no such intention can be drawn from the language of the Act, we are not authorized, from the mere statements contained in the report of the Committee, either to read such an inference into the Act, or to presume such an intent by Congress.

This is in effect a suit against the United States. The rule is well established that when the United States permits itself to be sued in its own courts, the terms of the permission must be strictly followed, and the suitor's cause must come within the Government's consent. The suitor here is an alien, although not an alien enemy, and while it is to be presumed that the United States will not confiscate the property now in the hands of the Alien Property Custodian, nevertheless it is the duty of the Custodian to defend his possession according to law, until Congress determines what disposition it will make of the property.

The decree is affirmed with costs.

Josiah A. Van Orsdel, Associate Justice.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Monday, May 7th, A. D. 1923.

* * * * * * *

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

DECREE

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Van Orsdel, May 7, 1923.

Judges George E. Martin and James F. Smith of the United States Court of Customs Appeals sat in this case in the place of Chief Justice Smyth and Associate Justice Robb.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR APPEAL—Filed May 23, 1923

To the Honorable the Court of Appeals of the District of Columbia:

And now come The Banco Mexicano de Commercio e Industria, and Elias S. A. de Lima, Francisco de P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, Plaintiffs-Appellants, by Cadwalader, Wickersham & Taft and Butler & Kratz, their solicitors herein, and pray that an appeal may be allowed them to the Supreme Court of the United States from the final decree of this Court made and entered in the above entitled cause the 7th day of May, 1923, for the reasons specified in their assignment of errors presented herewith; and the plaintiffs-appellants pray that the transcript of record of the proceedings herein, upon which the said final decree of May 7, 1923, was made, together with the said decree and the opinion of this Court, may be duly authenticated and sent to the said Supreme Court of the United States.

And the Plaintiffs-Appellants aforesaid pray that a deposit of $300.00, herewith tendered to the Court, may be deemed by this Court sufficient to act as a supersedeas herein, no funds involved herein being now in the possession of the Plaintiffs-Appellants so as to require that they be protected by a bond.

And the Plaintiffs-Appellants show that they are entitled to this appeal under Section 250 of the Act of Congress of March 3, 1911, as amended, known as the Judicial Code, more especially under paragraph Fifth of the said section, for that the existence or scope of a power or duty of an officer of the United States is drawn in question.

Plaintiffs-Appellants further pray that the mandate to issue herein on the aforesaid order of May 7, 1923, be stayed until the further order of this Court.

Dated, Washington, D. C., May 23, 1923.

Cadwalader, Wickersham & Taft, Solicitors for Plaintiffs-Appellants, Office & Post Office Address No. 40 Wall Street, Borough of Manhattan, New York City. Butler & Kratz, Solicitors for Plaintiffs-Appellants, Office & Post Office Address 1537 Eye Street, Washington, D. C.

Appeal allowed; mandate stayed; deposit of $300.00 in lieu of bond approved, same to act as a supersedeas.

Dated May —, 1923.

—— ——, Justice.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 23, 1923

Now come the plaintiffs-appellants, The Banco Mexicano de Commercio e Industria, and Elias S. A. de Lima, Francisco de P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, and, in connection with their petition for appeal, say that in the record of proceedings herein and in the final decree herein made and entered the 7th day of May, 1923, manifest error hath intervened to the prejudice of the plaintiffs-appellants, to-wit:

1. The Court erred in holding in effect that it did not appear from the facts alleged in the bill of complaint herein that the debt which the plaintiffs-appellants are seeking to recover arose with reference to moneys or other property held by the Alien Property Custodian or the Treasurer of the United States under the provisions of and within the meaning and intent of "An Act to Define, Regulate and Punish Trading with the Enemy, and for Other Purposes, Approved October 6, 1917," as amended by an Act of Congress to Amend Section 9 of said Act, which amending Act was approved June 5, 1920 and commonly known and hereinafter referred to as the "Trading with the Enemy Act."

2. The Court erred in holding in effect that it should have been, but was not, shown in the bill of complaint that some specific legal relation existed between the debt which the plaintiffs-appellants are seeking to recover and the money held by the Alien Property Cus-

todian, either/or (1) that the proceeds of the transactions, resulting in the debt sought to be collected, should be specifically traced into the "money or other property held by the Custodian," or (2) that there should exist some executory contract of purchase or sale directly affecting the money or property, so that it could immediately be seized under some process like a writ of replevin, or (3) that there should be a specific lien upon the money or property such as a vendor's lien, a lien created by pledge or mortgage, whether specific or equitable, or some kind of statutory lien, or (4) that the contract between the plaintiffs-appellants and the defendant-appellee, the Deutsche Bank, placed some limitation upon the disposition which the said Deutsche Bank might make of the borrowed money after it was delivered to said Deutsche Bank.

3. The Court erred in holding in effect that the right of the Banco Mexicano, under the law of the State of New York and upon the facts alleged in the bill of complaint, to bring a suit and obtain a judgment in said state against the Deutsche Bank, was not a remedy which gave such security for said debt, that within the meaning of the Trading with the Enemy Act, the debt arose with reference to the moneys or other property held by the custodian.

4. The Court erred in so construing Section 9, sub-section (*e*) of the Trading with the Enemy Act as to limit the right of recovery by a foreign creditor to the recovery of debts secured by a lien on money in the hands of the Alien Property Custodian or to the return of money or property owned by the foreign creditor or clothed with a trust or other interest or property right in his favor.

5. The Court erred in holding that upon the facts set forth in the complaint and admitted by the motion to dismiss, there existed no duty in either the Alien Property Custodian or the Treasurer of the United States to pay, transfer and deliver to the plaintiffs-appellants the sum of Five hundred thousand dollars ($500,000), with interest thereon at 5% per annum from December 15, 1916 to June 15, 1917, and thereafter to the date of payment at the rate of 6% per annum together with costs, all as prayed in the complaint.

6. The Court erred in that it held in effect that the plaintiffs-appellants herein have not set forth facts sufficient to entitle them to equitable relief under section 9 of the Trading with the Enemy Act, as amended.

7. The Court erred in affirming the final decree of the Supreme Court of the District of Columbia dated May 25, 1922, dismissing the complaint herein.

8. The Court erred in entering a final decree affirming with costs the decree of the Supreme Court of the District of Columbia made herein the 25th day of May, 1922.

Dated, Washington, D. C. May 23rd, 1923.

Cadwalader, Wickersham & Taft, Butler & Kratz, Solicitors for Plaintiffs-Appellants. Henry W. Taft, of Counsel.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Saturday, May 26th, A. D. 1923.

[Title omitted]

ORDER ALLOWING APPEAL

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered that said appeal be, and the same is hereby, allowed, and the bond to act as supersedeas, or cash deposit in lieu thereof, is fixed at the sum of three hundred dollars.

Memorandum

June 1, 1923.—Three hundred dollars deposited in lieu of bond, pursuant to order of May 26, 1923, allowing appeal and supersedeas.

CITATION AND SERVICE—Filed June 1, 1923

UNITED STATES OF AMERICA, *ss:*

To Deutsche Bank, a corporation; Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The Banco Mexicano de Commercio e Industria, and Elias S. A. De Lima, Francisco De P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this first day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged June 1, 1923.

Peyton Gordon, Counsel for Appellees. Harry A. Fellows, Counsel for Deutsche Bank.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed June 1, 1923

The Clerk will please prepare a transcript of record herein to consist of the following:

1. The transcript of record herein on appeal from the final decree of the Supreme Court of the District of Columbia dated May 25, 1922, to the Court of Appeals of the District of Columbia.

1*a*. Minute entry as to argument.

2. The opinion of the Court of Appeals of the District of Columbia herein, per Mr. Justice Van Orsdel.

3. The final decree herein of the Court of Appeals of the District of Columbia made and entered the 7th day of May, 1923.

4. The petition for appeal and notation of allowance and of approval of deposit in lieu of bond.

5. Assignment of errors.

6. Citation on appeal.

7. This praecipe.

Dated Washington, D. C., May —, 1923.

Cadwalader, Wickersham & Taft, Butler & Kratz, Solicitors for Plaintiffs-Appellants.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

To the clerk of the Court of Appeals of the District of Columbia:

This is to certify that in the above-mentioned cause I have today served a copy of the application for appeal to the Supreme Court of the United States, together with a copy of the præcipe, upon the United States Attorney for the District of Columbia, and also upon counsel for the Deutsche Bank.

John A. Kratz, Of Counsel for Plaintiffs-Appellants.

Subscribed and sworn to before me this 23rd day of May, A. D., 1923. C. E. Kibbey, Notary Public, D. C. (Notarial Seal.) My commission expires January 7, 1924.

Endorsed. No. 3838. The Banco Mexicano &c., et al., Appellants, vs. Deutsche Bank &c., et al. Affidavit as to Service. Court of Appeals. District of Columbia. Filed May 24, 1923. Henry W. Hodges, Clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from to to 111, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of the The Banco Mexicano de Commercio e Industria and Elias S. A. de Lima, Francisco de P. Cardona, and Edwin J. Parkinson, as Liquidators of said Banco Mexicano de Commercio e Industria, Appellants, vs. Deutsche Bank, a Corporation; Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, No. 3838, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this first day of June, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of the Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,671. District of Columbia Court of Appeals. Term No. 361. The Banco Mexicano de Commercio e Industria and Elias S. A. De Lima, Francisco De P. Cardona, et al., appellants, vs. Deutsche Bank, Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States. Filed June 7, 1923. File No. 29,671.

Supreme Court of the United States

October Term, 1923—No. 361

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA and ELIAS S. A. DE LIMA, FRANCISCO DE P. CARDONA, and EDWIN J. PARKINSON, as Liquidators of said Banco Mexicano de Commercio e Industria,

Appellants-Petitioners,

against

DEUTSCHE BANK, a Corporation; THOMAS W. MILLER, Alien Property Custodian, and FRANK WHITE, Treasurer of the United States,

Appellees-Respondents.

ON APPEAL FROM, AND ON PETITION FOR CERTIORARI TO, THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS-PETITIONERS

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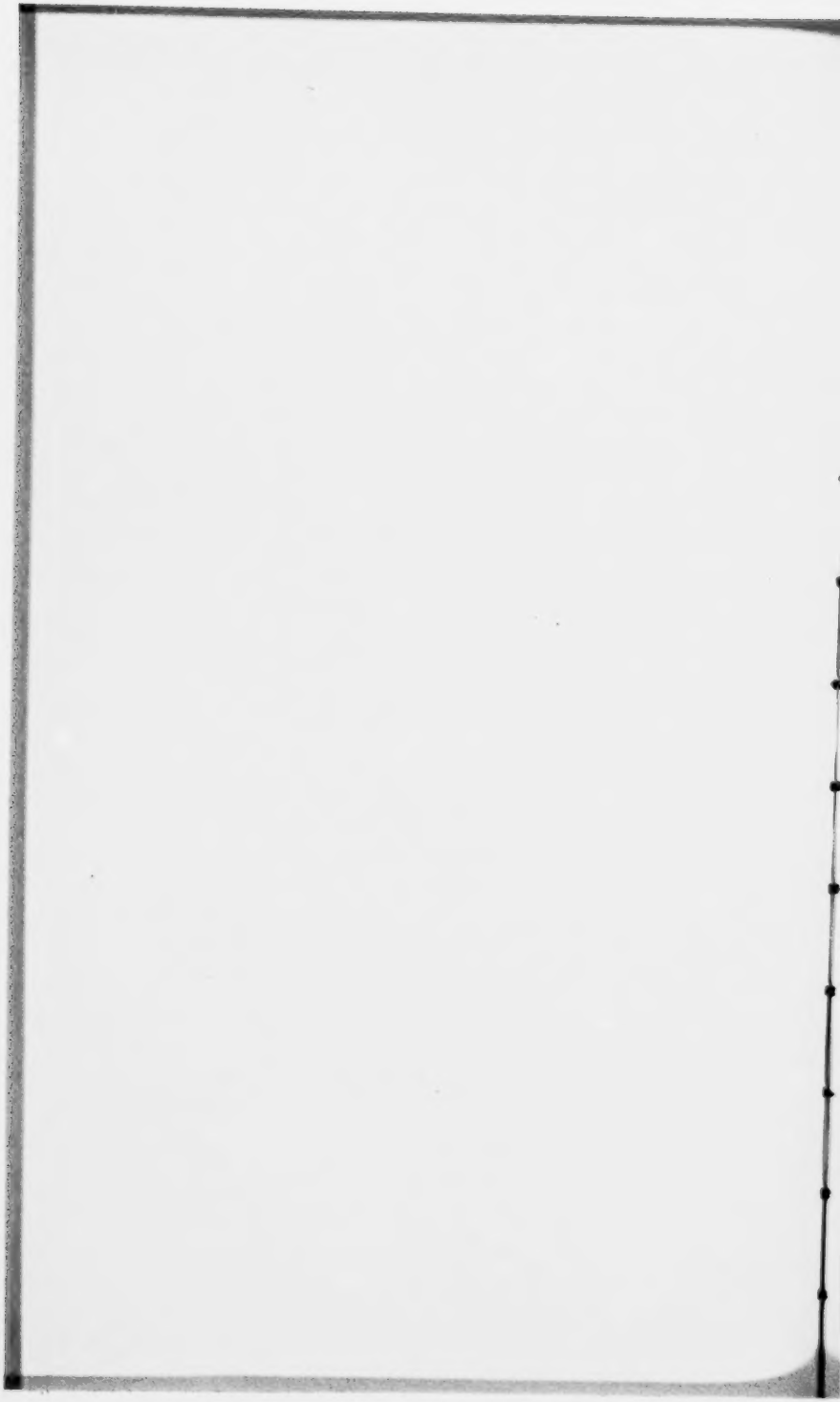
Outline of Argument.

Table of Cases Cited.

Other Authorities.

Acts of Congress.



Supreme Court of the United States

THE BANCO MEXICANO DE COMMERCIO E INDUSTRIA and ELIAS S. A. DE LIMA, FRANCISCO DE P. CARDONA, and EDWIN J. PARKINSON, as Liquidators of said Banco Mexicano de Commercio e Industria,

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Appellees-Respondents.

No. 361

October Term 1923.

ON APPEAL FROM, AND ON PETITION FOR A WRIT OF CERTIORARI FOR THE REVIEW OF, A FINAL DECREE OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AFFIRMING A FINAL DECREE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS-PETITIONERS.

Statement of the Manner in Which The Case Comes Into This Court.

This case is brought here upon an appeal, under Section 250 of the Judicial Code (36 Stat., 1159), and particularly under subdivision 5 of that Section, from a final decree of the Court of Appeals of the District

of Columbia,* made and entered on the 7th day of May, 1923, dismissing with costs the Bill of Complaint. The appeal was allowed by the Court of Appeals on May 26, 1923 (Rec., p. 97). It is based upon the fact that the case is one "in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question" (Jud. Code, §250, subdivision 5). The question involved is the scope of the power and duty of the Alien Property Custodian under sub-sections (a) and (e) of Section 9 of the Trading with the Enemy Act (41 Stat., 977), and particularly whether he should be directed to pay to the plaintiffs out of seized property in his hands belonging to the defendant Deutsche Bank, an alien enemy, a debt owing by it to the plaintiffs, who are friendly aliens.

The appeal also lies under subdivision 6 of Section 250 of the Judicial Code, providing that an appeal may be taken "in cases in which the construction of any law of the United States is drawn in question by the defendant." For the cause of action set forth in the Bill of Complaint is based upon a construction of Section 9, sub-sections (a) and (e) of the Trading with the Enemy Act, which was drawn in question by the defendants, the Alien Property Custodian and the Treasurer of the United States, in moving to dismiss the Bill of Complaint. See *Payne* v. *Central Pacific Ry. Co.*, 255 U. S., 228.

The appellants on June 28, 1923, upon the advice of counsel and out of greater caution, and upon

*Opinion reported in 289 Fed., 924.

the certificate of counsel that the true scope and intent of Section 250 of the Judicial Code under which the appeal had been allowed, was doubtful, filed a petition with this court for a writ of *certiorari* to review the decision of the Court of Appeals of the District of Columbia, praying in the alternative, either (1) that a writ of *certiorari* be issued to the Court of Appeals for the purpose of reviewing in this court, under the provisions of Section 251 of the Judicial Code, the final decree of that court, or (2) that consideration of the petition be deferred until the hearing on the appeal.

This court, on October 8, 1923, postponed action upon the petition until the consideration of the case on the appeal so that it and the application for the writ of *certiorari* might be heard together. If the court shall decide that an appeal does not lie, we ask on the grounds stated in the petition and the brief submitted in support thereof that a writ of *certiorari* be issued, and that thereon and upon the record heretofore certified and filed herein, the final decree of the Court of Appeals be reversed.

The Cause of Action.

The plaintiffs-appellants brought their bill in equity under Section 9, sub-section (a) of the Trading with the Enemy Act: "An Act To amend section 9 of an Act entitled 'An Act to define, regulate, and punish trading with the enemy, and for other purposes,' approved October 6, 1917, as amended," approved June 5, 1920 (41 Stat. 977). The specific

question involved is to what extent and in what manner the right of a friendly alien under sub-section (a) to collect a debt out of money or property of an alien enemy in the hands of the Custodian, is limited by the provision of sub-section (e) that such debt must have arisen "with reference to" such money or property.

For convenience of reference we here set forth pertinent portions of Section 9 as amended:

> "SEC. 9. (a) *That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property* which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, *or to whom any debt may be owing from an enemy or ally of enemy* whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit

at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, *said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia* or in the District Court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), *to establish the interest, right, title, or debt so claimed,* and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the court shall determine said claimant is entitled. * * * " (Italics ours.)

Sub-sections (b), (c) and (d) of Section 9 provide for cases with which we are not concerned upon this appeal. Sub-section (e) contains the limitation upon the power and duty of the Alien Property Custodian, the meaning of which is the principal question involved upon this appeal. That sub-section provides as follows, viz:

"(e) No money or other property shall be returned nor any debt allowed under this section

> to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and *as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.*" (Italics ours.)

Sub-section (f), which, argumentatively, has much significance, is as follows:

> "(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

The appellant, the Banco Mexicano de Commercio e Industria, is a corporation organized under the laws of the Republic of Mexico to conduct a banking business. The individual appellants are its liquidators. (Bill of Complaint, paragraphs 3 and 4; Rec., p. 3). At the time of the transaction on which the suit is based the Banco Mexicano had no office in this country, its principal place of business being the City of Mexico (Bill of Complaint, par. 4; Rec., p. 3). But the Deutsche Bank then and for some time theretofore maintained an office for the transaction of the

banking business in the City of New York (Rec., p. 4).

On or about December 15, 1916, the individual appellants, as liquidators of the Banco Mexicano, made in New York City a loan to the Deutsche Bank of $500,000 in gold, which was by its terms payable in New York City in gold dollars on June 15, 1917, with interest at the rate of 5 per cent. per annum (Bill, par. 5; Rec., p. 4). After the loan was made its proceeds "were never transferred from the United States physically or otherwise, but constituted a part of the balance of the general deposits and securities and other property in the United States of the Deutsche Bank which were taken over and seized by the then Alien Property Custodian" (Bill, par. 7; Rec., p. 4). Some time after the declaration of war between the United States and Germany and after the passage of the Trading with the Enemy Act, the money and property of the Deutsche Bank in the United States were turned over to or seized by the Alien Property Custodian and have ever since been held by him (Bill, par. 6; Rec., p. 4). From the time when the loan was made and until the property of the Deutsche Bank came into the custody of the Alien Property Custodian, that corporation "continuously kept in the United States sufficient funds and property over and above what was necessary to pay and discharge all other claims and debts of every kind, to repay said loan in American gold dollars with interest at the rate of 5% from December 15, 1916" (Bill, par. 8; Rec., p. 4). It is further

alleged in the Bill of Complaint that the "Deutsche Bank would, in the ordinary and usual course of business which it was then carrying on in this country and particularly in the City of New York, have so repaid the same [*i. e.*, the loan] when the debt fell due, if war had not intervened between the United States and Germany" (Bill, par. 8; Rec., p. 4).

The allegation is made in the Bill of Complaint and is admitted in the answer of the Deutsche Bank (Rec., p. 9) that the funds and property taken over by the Alien Property Custodian "were kept in the United States for the express purpose and with the intention by the use thereof, of repaying the said loan when the same fell due" (Bill, par. 8; Rec., p. 4).

On May 27, 1920, the individual appellants, as liquidators, filed a claim and demand with the Alien Property Custodian and made an application to the President of the United States, for the payment of the debt of the Deutsche Bank, as required by the provisions of the Trading with the Enemy Act. The claim and application having been denied (Bill, pars. 9, 10 and 11; Rec., p. 5), this suit was brought under the provisions of Section 9, sub-sec. (a) of the Act for the recovery of the amount of the debt with interest at the rate of 5 per cent. to the date of maturity, and thereafter at the rate of 6 per cent. The Deutsche Bank on June 5, 1920, filed with the Alien Property Custodian a consent that the claim of the appellants should be allowed and that the debt with interest should be paid "out of the funds and such

other securities seized by the Custodian as formerly belonged to the Deutsche Bank, and were held by said Custodian or by the Treasurer of the United States" (Bill, par. 13; Rec., p. 5). The Alien Property Custodian and the Treasurer of the United States held sufficient cash and marketable securities formerly belonging to the Deutsche Bank, over and above all claims against the same, to discharge the debt owing to the Banco Mexicano or its liquidators, with interest (Bill, par. 14; Rec., p. 6).

It is further alleged in the Bill of Complaint that if it had not been for the delivery of the property of the Deutsche Bank to the Alien Property Custodian under the provisions of the Trading with the Enemy Act, the courts of New York State, where the transaction had originated and where the loan was to be repaid, would have had jurisdiction of the parties so that a suit could have been brought there by the Banco Mexicano or its liquidators against the Deutsche Bank for the recovery of the debt and interest; and furthermore, that the property and funds of the Deutsche Bank could have been attached in such a suit and could have been held as security for and applied to the satisfaction of a judgment against the Deutsche Bank when obtained (Bill, par. 16, Rec., p. 6).

Upon the foregoing facts the Bill of Complaint prayed that the Alien Property Custodian or the Treasurer of the United States pay to the appellants $500,000 with the interest above specified.

Motion to Dismiss.

The Alien Property Custodian and the Treasurer of the United States appeared by the Attorney of the United States in and for the District of Columbia and moved to dismiss the bill of complaint upon the ground "that the debt which the plaintiffs are seeking to recover did not arise with reference to any money or other property held by the Alien Property Custodian or the Treasurer of the United States under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended," and further upon the general ground "that the plaintiffs herein have not set forth facts sufficient to entitle them to equitable relief under Section 9 of the Trading with the Enemy Act as amended" (Rec., p. 8).

It is assumed in this brief that the second ground of the motion is merely a corollary of the first and that the sole basis for the motion to dismiss rests upon the proper interpretation of that part of subsection (e) of Section 9, which provides that a debt "as to claimants other than citizens of the United States" may not be allowed by the Alien Property Custodian or the President of the United States under the provisions of sub-section (a) of the same section "unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder." The Government denied the right of the appellants to collect the debt incurred under the circumstances outlined above, and it is the denial of that right that makes the issue in this suit. The motion to dismiss

is in the nature of a demurrer and the material facts alleged in the Bill of Complaint are to be taken as true. (Equity Rule 32 of the Supreme Court of the District of Columbia; Gibson's Suits in Chancery, Sec. 310; Hopkins' Fed. Eq. Rules (3rd Ed., 1922, p. 187); *Stromberg Motor Devices Co.* v. *Holley Bros. Co.*, 260 Fed. Rep., 220.)

The Proceedings Upon the Motion to Dismiss.

The cause was brought on for trial before the Supreme Court of the District of Columbia upon the Bill of Complaint (Rec., p. 2), the answer of the defendant Deutsche Bank (Rec., p. 9) and the motion to dismiss the Bill of Complaint (Rec., p. 8). The motion to dismiss was granted and from the decree entered thereon the plaintiffs appealed to the Court of Appeals of the District of Columbia (Rec., p. 86).

Upon the argument of the motion to dismiss, there were received by the court without objection on the part of any of the defendants, and there became a part of the record herein, certified copies of (1) the record of a hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-sixth Congress, Second Session, on H. R. 14208 (Rec., pp. 11-75), and (2) report No. 1089 of the Committee on Interstate and Foreign Commerce of the House of Representatives, to accompany H. R. 14208 (Rec., pp. 75-85).

The former report derives its special value from the statement it contains of the Assistant Attorney

General who drafted the bill afterwards enacted into law on June 5, 1920. In illustrating the scope and meaning of the provision which became sub-section (e) of Section 9, he stated that its purpose was to keep out claims of non-American origin. His illustrations (Rec., p. 31) of claims which were intended to be allowed under the Act included a case almost identical in its essential features with the case at bar. The report is discussed in sub-point G, *post*, pages 34 *et seq.*

Assignments of Error.

These are set forth at pages 95 and 96 of the record, and no assignment of error has been abandoned. The first assignment is as follows:

> "1. The Court erred in holding in effect that it did not appear from the facts alleged in the bill of complaint herein that the debt which the plaintiffs-appellants are seeking to recover arose with reference to moneys or other property held by the Alien Property Custodian or the Treasurer of the United States under the provisions of and within the meaning and intent of 'An Act to Define, Regulate and Punish Trading with the Enemy, and for Other Purposes, Approved October 6, 1917,' as amended by an Act of Congress to Amend Section 9 of said Act, which amending Act was approved June 5, 1920, and commonly known and hereinafter referred to as the 'Trading with the Enemy Act.' "

This assignment in general terms raises the entire question involved upon this appeal. The second assignment is as follows:

"2. The Court erred in holding in effect that it should have been, but was not, shown in the bill of complaint that some specific legal relation existed between the debt which the plaintiffs-appellants are seeking to recover and the money held by the Alien Property Custodian, either/or (1) that the proceeds of the transactions, resulting in the debt sought to be collected, should be specifically traced into the 'money or other property held by the Custodian,' or (2) that there should exist some executory contract of purchase or sale directly affecting the money or property, so that it could immediately be seized under some process like a writ of replevin, or (3) that there should be a specific lien upon the money or property such as a vendor's lien, a lien created by pledge or mortgage, whether specific or equitable, or some kind of statutory lien, or (4) that the contract between the plaintiffs-appellants and the defendant-appellee, the Deutsche Bank, placed some limitation upon the disposition which the said Deutsche Bank might make of the borrowed money after it was delivered to said Deutsche Bank."

This assignment, strictly speaking, is argumentative. It deals with elements which are involved in the main question whether the debt "arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States." The third assignment raised the point that the court erred in not holding that the right of the Banco Mexicano to obtain a judgment in the State of New York against the Deutsche Bank was "a remedy which gave such security for said debt" that it had the effect of making the debt arise "with ref-

erence to the money or other property held by the Custodian." The remaining assignments of error raised in varying forms the points substantially covered by the first three assignments.

ARGUMENT.

I.

The meaning of Section 9, sub-section (e) of the Trading with the Enemy Act.

Under the Trading with the Enemy Act as originally enacted on October 6, 1917 (40 Stat., 411), and as amended by the Deficiency Appropriation Act, approved July 11, 1919 (41 Stat., 35), "any person not an enemy or ally of enemy" to whom any debt was owing by "an enemy or ally of enemy" could, after having made the demand provided for in the Act, commence a suit in equity in the Supreme Court of the District of Columbia for the recovery of such indebtedness out of the property held by the Custodian.*

By the second paragraph of Section 9, which became in the amended Act of 1920 sub-section (f), it was provided that the property in the hands of the Custodian should "not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court." Thus all creditors, whatever the nature of their pre-existing rights, were precluded from resorting to any other court or

*Only in case the claimant elected to sue in a District Court of the United States was he required to be a resident of the district in which suit was commenced. The Supreme Court of the District of Columbia, on the other hand, was (by the 1919 Amendment) opened to non-resident friendly aliens, who thus for the first time had access to a forum in which to prosecute their claims.

pursuing any other legal or equitable remedy by which they might, but for the Act, have collected their claims out of the property. The Act as amended in 1919, contained no limitation of the right to collect a debt, based upon the manner in which it was secured, or the place where, or the circumstances under which, it had been incurred. Thus, an unsecured debt, incurred in a foreign country in a transaction having no relation to this country or to the property in the hands of the Alien Property Custodian, could (by virtue of the 1919 amendment) have been collected by a non-resident friendly alien.

Before the amendment of 1920, therefore, a very liberal policy was in effect in favor of all non-resident friendly aliens; and the Federal government pursuant thereto waived its prerogative of sovereignty by permitting itself to be sued, not only by its own citizens, but also by non-resident friendly aliens, upon unsecured debts of alien enemies whose property was in its hands. The statute (41 Stat., 35) embodying this policy created a much enlarged jurisdiction in the Supreme Court of the District of Columbia.

The amending act approved June 5, 1920, made several changes and for purposes of clearness subdivided the section into sub-sections "(a)," "(b)," "(c)," "(d)," "(e)," "(f)," and "(g)." Verbal changes were made in sub-section "(a)" which it is not necessary to notice here. They effected no change in the provisions of the part of the Act by which a claimant could recover only (1) where he had an "interest, right, or title" in the property held by the

Custodian, or (2) where a debt was owing to him "from an enemy or ally of enemy" owning such property. But the right to assert such claims in suits in equity was qualified by the conditions provided for in sub-section (e) of the amended act. We repeat that sub-section:

> "(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and *as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.*" (Italics ours.)

The first of the three cases thus provided for is not pertinent because the Republic of Mexico was not "associated with the United States in the prosecution of the war." The second condition is fulfilled because the debt on which this action was based was owing to the claimant prior to October 6, 1917, to-wit, on December 15, 1916.

The present controversy arises concerning the proper interpretation of the third condition provided for in sub-section (e).

(A) The reasonable meaning of sub-section (e).

The description in sub-section (e) of a debt as one which "arose with reference to the money or other property," from the legal standpoint, and as legal phraseology is usually interpreted, is without definite significance. It is inartificial and untechnical. Even the word "arose" is unusual, a debt being usually described as having been "incurred" or "assumed"; and if specific security for a debt were intended to be described, the apt words would be "secured by money or other property," and not that it "arose with reference to" such money or property. But passing the use of unusual and inappropriate words as being chiefly important to show carelessness from the standpoint of legal draftsmanship, it is clear that in no sense either etymologically or grammatically does the description that a debt "arose with reference to the money or other property," convey the idea of a definite legal relation, recognized in our system of law, of the debt to the "money or other property." The words are merely those of general description. If it had been intended to connote accepted legal concepts, appropriate language could easily have been selected, as for instance as follows viz:

> "That any person * * * claiming any interest, right or title in any money or other property, * * * or to whom any debt may be owing, *secured by a specific legal or equitable lien upon, or by a claim to or in, such interest, right or title,* * * * may file with the said custodian a notice of his claim under oath * * * ."

Such a provision would include all cases where by reason of the legal effect of the transaction, the property could be pursued for the satisfaction of the debt in a proceeding *quasi in rem* based on a legal or equitable title, or upon a right of possession or a lien. The fact that such unambiguous language was not used is cogent testimony that Congress had no intention of expressing any recognized legal relation. Some other meaning, therefore, must be sought for the words.

The Standard Dictionary describes the words "with reference to" as meaning "the state of being referred or related." No definite or conclusive legal concept is implied in those words. In a colloquial, business, etymological and grammatical sense, there are many cases where it may with accuracy be said that a debt has been incurred with reference to certain money or property, as, for instance, where by the ordinary processes of the courts the indebtedness could be collected out of such money or property belonging to the debtor. With equal accuracy the same language might be applied to a case where the creditor expected that a debt would, in the ordinary and current course of business, be paid out of money or property which was being employed in the business in connection with which the debt was incurred, and where the creditor relied on the continuing availability of such money or property as the basis of the credit. In other words, it is reasonable to look upon "with reference to" as equivalent to "with an eye toward."

The existing if inchoate right of the Banco Mexicano (which we shall show in sub-point C, *post*, p. 23, existed) to sue upon the debt of the Deutsche Bank in the courts of the State of New York, where the loan was made and was payable, was a potential or executory remedy which needed only the presence in that jurisdiction of property belonging to the Deutsche Bank, to convert it into an effective legal security; and such security was actually available to the Banco Mexicano, because from the time of the making of the loan and until the money and the property of the Deutsche Bank had been taken over by the Government, the Deutsche Bank, if war had not ensued, would have paid the debt "in the ordinary and usual course of business which it [*i. e.*, the Deutsche Bank] was then carrying on in this country and particularly in the City of New York"; and it "continuously kept in the United States sufficient funds and property over and above what was necessary to pay and discharge all other claims and debts of every kind, to repay said loan in American gold dollars with interest at the rate of 5% from December 15, 1916, and said funds and securities were kept in the United States for the express purpose and with the intention by the use thereof, of repaying said loan when the same fell due" (Bill, par. 8; Rec., p. 4). It is not a violent assumption that it was the very existence of the money and property in this country, and, therefore, the likelihood of the payment of the debt, that were the inducements for the loan and created the credit of the Deutsche Bank on which the Banco Mexicano relied. In a very prac-

tical sense, under the foregoing circumstances, therefore, the debt was incurred with reference to the money or property of the Deutsche Bank which came into the hands of the Custodian.

(B) The interpretation contended for by the Government would disturb existing legal rights and remedies and should therefore be avoided.

The Government is practically forced into the position of claiming that debts do not arise "with reference to the money or other property" except (i) where proceeds of a sale can be traced into the property, or (ii) where a contract for the purchase or sale of specific property has been made and there can be some remedy for compelling its delivery, as in a suit for specific performance, or (iii) where there is some kind of specific lien, legal or equitable, upon the property, or (iv) where title is based on physical identity and there may be recovery of possession as, for instance, by writ of replevin. But it is obvious that if the debt referred to in sub-section (e) of Section 9 is confined to such cases, an intention must be attributed to Congress to destroy existing remedies under laws of the several States, where the property could, before the Act, have been reached in their courts in satisfaction of the debt upon judgment and execution. (See sub-point C, *post,* p. 23.) Such an intention is not reasonably to be inferred from the language of sub-section (e), because its language lacks the precision apt to express such a radical disturbance of rights and remedies. Moreover, such a purpose would be inconsistent with the

liberal policy inaugurated by the general provisions of the original Act as amended in 1919 (41 Stat., 35), to which we have referred. The remedies afforded by those provisions were broader than those which would have been open to the parties if war had not occurred; for they gave to foreign creditors a right to sue in equity upon a debt—a cause of action usually cognizable only at law—in the Supreme Court of the District of Columbia, even though both the creditor and the debtor were non-resident aliens, and the entire transaction from which the indebtedness resulted was consummated, and the loan was payable, in a foreign country. Thus, a Swedish iron merchant who had sold in Germany a consignment of iron ore, to be delivered to a German steel company in Germany and to be paid for there, could have successfully maintained a suit in equity in the Supreme Court of the District of Columbia for the purchase price, and on obtaining judgment could have satisfied it out of money or property of the German steel company in the hands of the Alien Property Custodian, even though (1) the entire transaction had been completed and the iron delivered in Germany, (2) all the parties were non-residents and non-citizens of the United States and the debtor was an alien enemy, and (3), except for the provisions of Section 9, neither the Federal nor the State courts would have had jurisdiction, either of the parties or of the subject-matter.

In the absence of some purpose clearly appearing from the language of the Act itself or from its legislative history, there is a strong presumption that

Congress did not intend by using such ambiguous language as that employed in sub-section (e), Section 9, of the Act of 1920, not only completely to reverse the liberal policy of the earlier Act, but also to deprive creditors of the remedies which they would otherwise have had for the collection of their debts in both the State and the Federal courts. (See *Kohn* v. *Kohn, Inc.*, 264 Fed. Rep., 253, 255; *Fischer* v. *Palmer*, 259 Fed. Rep., 355.) By sub-section (f) of Section 9 of the Act, property in the hands of the Custodian was to continue to be free from "lien, attachment, garnishment, trustee process, or execution" and was not to be subject to "any order or decree of any court" (41 Stat., 980). Unless sub-section (e) is interpreted in accordance with our contention, the prohibition of sub-section (f) results in what is in the nature of confiscation, and that, as we point out in sub-point F, *post*, p. 32, is to be avoided. If, however, the elastic language of sub-section (e) is interpreted so as to extend to the allowance of claims which could, except for the passage of the Act, have been prosecuted to judgment in the courts of one of the States and have been satisfied out of the property found in such State, we avoid a violent disturbance of property rights and existing remedies, and there would be excluded from the benefit of the Act only those persons having no business or residence connection with this country and possessing no specific claim to or lien upon the money or property in the hands of the Custodian.

(C) Provisions of State and Federal law.

In view of the foregoing considerations, it is proper to make a more ample and specific exposition of the provisions for the collection of debts in the State and Federal courts before the amendment of 1920.

(1) The New York statutory law is, of course, within the judicial notice of the Federal courts (*Moore* v. *Pywell,* 29 App. D. C., 312, 324; *Cheever* v. *Wilson,* 9 Wall., 108, 121).

Before the Civil Practice Act of New York went into effect on October 1, 1921, the subject of jurisdiction of the New York courts was covered by Section 1780 of the Code of Civil Procedure. The provisions of that section are now, in substantially the same form, embodied in Section 47 of the General Corporation Law of New York.

Section 1780 of the Code of Civil Procedure was in effect at the time when the debt of the Deutsche Bank was incurred and became due, and down to the date of the amendment of Section 9 of the Trading with the Enemy Act in 1920. It provided that an action might be maintained by one foreign corporation against another foreign corporation, or by a non-resident individual, in the following cases, viz:

> "(1) Where the action is brought to recover damages for the breach of a contract made within the State, or relating to property situated within the State, at the time of the making thereof.

"(2) Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

"(3) Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

"(4) Where a foreign corporation* is doing business within this state."

Under this section, the Supreme Court of the State of New York would have had jurisdiction to entertain a suit by the Banco Mexicano against the Deutsche Bank for the collection of its note if it had not been paid at maturity, because the following bases of such jurisdiction existed, viz: (a) there was a "breach of a contract made within the state," (b) "the cause of action arose within the state," and (c) the Deutsche Bank was "doing business within this State."

Furthermore, under Sections 635 and 636 of the Code of Civil Procedure, now embodied in Sections 902 and 903 of the New York Civil Practice Act, in an action for a breach of contract a plaintiff† might have obtained a writ of attachment against a foreign corporation or a non-resident individual, and, by Section 708 of the Code of Civil Procedure, now embodied in Section 969 of the New York Civil Practice Act, a judgment when obtained in such action could have been satisfied out of the attached property.

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*This means the defendant foreign corporation: *United States Asphalt Refining Co.* v. *Comptoir National d'Escompte de Paris,* 166 App. Div. (N. Y.) 64, aff'd without opinion, 221 N. Y., 540.

†It matters not that the plaintiff also is a non-resident or a foreign corporation: *Bridges* v. *Wade,* 110 App. Div. (N. Y.), 106; *Lukens Iron & Steel Co.* v. *Payne,* 13 App. Div. (N. Y.), 11.

Thus, before the passage of the Trading with the Enemy Act in 1917, there would have been a complete remedy in New York State by which, under the circumstances of this case, the Banco Mexicano could have sued the Deutsche Bank, could have attached its property (of which there was an ample amount, Bill, par. 8, Rec., p. 4), and could have collected a judgment out of such property; or, it could have proceeded without attachment and have satisfied a judgment when obtained by execution levied upon the property of the Deutsche Bank found within the State.

(Note: By Section 9 of the Act of 1917, as amended by the Act of July 11, 1919, *supra,* non-resident alien individuals and corporations were accorded broader rights even than they then enjoyed under the laws of New York, in that they could collect their indebtedness out of the property of non-resident alien enemies in the hands of the Custodian, wherever and however it arose, and whatever its nature.)

(2) While we have not made a detailed examination of the statutes of the several States, we believe it is not too much to say that provisions similar to those in New York are in effect in most of the code States throughout the country, as well as in some of those States which adhere to common law practice.

(3) The jurisdiction of the Federal courts before the passage of the Trading with the Enemy Act is also pertinent because, by contrast, it shows the liberality of the policy of our Government embodied in the Trading with the Enemy Act. The rights and rem-

edies enjoyed by non-residents in the Federal courts before the passage of the Act, were far more restricted than under the laws of New York. For the judicial power of the Federal courts under Section 2 of Article III of the Federal Constitution does not extend to suits where both the plaintiff and the defendant are aliens; and that is so even if the cause of action arises within the United States or the defendant has property within the United States. (See *Gage* v. *Riverside Trust Co.*, 156 Fed. Rep., 1002, 1007, appeal dismissed, 218 U. S., 690; see also cases cited in 4 Fed. Stat. Ann. (2d Ed.), p. 973).

(D) The intention of Congress was to embrace by the provisions of sub-section (e) cases other than those where there was a definite legal "interest, right, or title" in the seized property.

We must, of course, find some sensible meaning for the phrase "arose with reference to the money or other property." Both the counsel for the Government and the Court of Appeals have felt the pressure of this canon of interpretation, and they have attempted to meet its requirements. But in doing so, as we have pointed out above, they find themselves logically forced to maintain that a debt which "arose with reference to the money or other property" must have been a debt which was related to such money or property in such a way that it could be satisfied by pursuing a right in the nature of a right *in rem* to, or a lien upon, the seized property. For illustration, we may repeat some cases of a debt of that kind, viz:

(1) Where the proceeds of the transaction resulting in the debt are actually traceable into the money or other property held by the Custodian so that under ordinary rules of law the money or property may be reached by a creditor; or (2) where the money or property is so affected by an executory contract of purchase or sale that it may be obtained in a suit for specific performance or seized under some process like a writ of *replevin;* or (3) where there is a specific lien upon the money or property, such as that existing in favor of a vendor or by reason of a pledge or mortgage, or by force of a statute or rule of law or equity; or (4) where by agreement the debtor is restricted in the disposition which he is permitted to make of the specific borrowed money so that equity would permit its recovery.

Perhaps we have not covered all the cases where a debt might be incurred under circumstances which would give to the creditor a definite legal right to resort to the property, but the foregoing cases are sufficient for purposes of argument. The question arises as to whether Congress intended by the limitations of sub-section (e) to imply that only in such cases as those mentioned above, a debt arises "with reference to the money or other property held by the Custodian." An analysis of the provisions of sub-section (a) will aid in enabling us to answer that question.

Sub-section (a) of Section 9 (unchanged in this respect by either of the amending acts of 1919 or 1920) allows a remedy against the property in the

hands of the Alien Property Custodian in two cases, viz:

> Case 1: To any person (not an enemy or ally of enemy) "claiming any interest, right, or title in" the seized property; and
>
> Case 2: To any person (not an enemy or ally of enemy) "to whom any debt may be owing from an enemy or ally of enemy whose property" has been seized.

If the words "arose with reference to" in sub-section (e) imply a definite legal relation such as any of those enumerated above, it necessarily results that in legal effect they provide for precisely the same cases as those already provided for by sub-section (a), to-wit, those where a person claims an "interest, right, or title in" the seized property. A reference to the examples mentioned in the opinion of the Court of Appeals will make this statement still clearer.

The Court said (Rec., p. 93):

> "There are conceivable instances where in a plain case of debt, without title or lien against the money or property, the debt might arise with reference to the money or other property taken over by the Custodian. For example, if the money seized was identically the same money which furnished the basis of the debt, or if the money had been loaned and used for the specific purpose of purchasing property which had been seized by the Custodian, the debt might have such reference to the money or property as to permit of suit by an alien. But that is not the case."

The first case mentioned by the Court is: where "the money seized was identically the same money which furnished the basis of the debt." But in such a case the claimant would clearly have, under sub-section (a), an "interest" in, if not a "title" to, the identical money, without reference to the provisions of sub-section (e). Why, therefore, provide for such a limitation in that sub-section?

The other example mentioned by the Court is where "the money had been loaned and used for the specific purpose of purchasing property which had been seized by the Custodian." But in that case the implied trust from the improper use of the money, and the resulting claim to the property, would clearly be an "interest" in or "right" to the property cognizable in equity and sufficiently provided for in sub-section (a) (Case 1, *ante*, page 28). Why then repeat it in sub-section (e) by way of limitation upon the cases in which the property could be resorted to for the payment of a debt?

All the other cases that we have enumerated above similarly fall within the category of claims based upon an "interest, right, or title in" the property. Thus (1) if the proceeds of a transaction could be specifically traced into the property seized, the claim to recover the property would constitute both an "interest" in it and a "right" to it; or (2) if a case existed where a writ of *replevin* could be issued to take possession of the property, such writ would necessarily be predicated upon a "title" to the property; or (3) if there existed a vendor's lien or a lien created by pledge, by mortgage, by statute, or by rule of

law or equity, there would be an "interest" in the property itself; or (4) if some express limitation upon the use of the property was imposed by the owner there might spring therefrom a "right" in equity to the property itself.

Thus, in any conceivable case where a remedy exists either in law or in equity, to proceed against and secure possession of the money or property itself, it has been provided for in the first part of sub-section (a), which permits a person "claiming any interest, right, or title in" the seized property to maintain a suit in equity for its recovery. If we are right in this conclusion, we repeat, how can it be reasonably said that by sub-section (e) Congress intended to limit cases where debts could be collected out of the seized property to those where under sub-section (a) such property could have been resorted to? Unless a result different from that was intended by the provisions of sub-section (e), the purpose of Congress would have been accomplished by simply eliminating from the statute all reference to debts, and extending a remedy against the seized property to those persons only who claimed "any interest, right, or title" therein.

It follows from these considerations that when Congress referred to debts which "arose with reference to the money or other property held" by the Custodian, the intention was to cover transactions other than those resulting in a claimant having a definite legal "interest, right, or title in" the seized property; and we have suggested in sub-point A, *ante*, page 17, what kind of transactions Congress must have intended to reach.

(E) Sub-section (e) vested in a court of equity the power to determine in each case whether a debt "arose with reference to the money or other property held by the Alien Property Custodian."

The remedy provided for by sub-section (a) of Section 9 was "a suit in equity." The technical nature of the cause of action was ignored in providing the remedy; and actions on debt, or in replevin, for instance, although usually cognizable in a court of law, were to be tried in a court of equity. This fact is another evidence of the liberal policy which led to the enactment of the law, and it is not a violent assumption that Congress intended to commit to a court of equity not only all issues at law or in equity, but also the broad question of fact as to whether a debt "arose with reference to the money or other property" held by the Custodian.

It is easy to see why "claimants other than citizens of the United States" [sub-section (e)] should be discriminated against in respect of remedies upon debts not resulting from transactions in this country, or upon debts payable in a foreign country. But where, as in the case at bar, the debtor had been continuously engaged in the banking business in this country, had kept funds sufficient to pay and for the purpose of paying the debt, and where the debt was to be paid in American currency in the City of New York, and the creditor could have sued upon the debt in the courts of New York and levied on and applied to its payment

property remaining here, *the entire transaction was American*—it was *not,* in the phrase of the Assistant Attorney General who drafted the amendment of 1920, *"of non-American origin";* and there was no reasonable ground to limit the meaning of the words used in sub-section (e) so narrowly as to prevent the Supreme Court of the District of Columbia, sitting in equity, from holding that a debt incurred under such circumstances "arose with reference to the money or other property" held by the Custodian.

(F) The statute should be interpreted so as to avoid the destruction of neutral rights and remedies, and a contravention of international law.

To interpret the statute in such a sense as to deprive a claimant of a remedy under the circumstances just mentioned would be to attribute to Congress an intention to do something in the nature of a confiscation of neutral property rights.

It is a fundamental rule of statutory construction that

> "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations as understood in this country" (*Murray* v. *Schooner Charming Betsy,* 2 Cranch, 64, 118).*

*"'International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.'" *The Paquete Habana,* 175 U. S., 677, 700.

A temporary interference with a neutral's right to avail himself of his property rights constitutes a "forced loan," and it is stated without qualification in *Hyde on International Law* (1922), Vol. 2, Sec. 631, that "the United States itself has never exacted forced loans." *A fortiori*, to go further and permit the complete destruction of a neutral's right in enemy property without compensation, is contrary to justice and to the principles of international law. Professor Hyde further says (Section 633) that while neutral property may be seized, to do so where there is not a vital need and where compensation is not assured to the owners "would manifest an abuse of power." Furthermore, to interpret sub-section (e) in accordance with the theory of the Government and of the Court of Appeals, would be at variance with the policy of this government announced as long ago as 1833, that even in cases of conquest,

> "that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated, and private rights annulled." (*United States* v. *Perchemann*, 7 Pet., 51, 87).

See also *Ex parte Boussmaker*, 13 Vesey, 71; 28 Yale Law Journal, 478 (March, 1919); 21 Columbia Law Review, 666 (November, 1921); Hague Convention of 1907, Arts. 1-5.

In *United States* v. *The Peggy*, 1 Cranch, 103, Chief Justice MARSHALL said that while the independent political discretion of a government could

not be questioned, its exercise should never collaterally prejudice vested rights. See also *United States* v. *Arredondo,* 6 Peters, 691, 710. And in *MacLeod* v. *United States,* 229 U. S., 416, 434, the Supreme Court remarked that the purpose of the Government "to act within the limitations of international law" is inherent as a principle of the Constitution.

(G) The legislative history of the Act of June 5, 1920.

Our view of the proper interpretation of subsection (e) is confirmed by the legislative history of the bill which became the Amending Act of June 5, 1920. This history is a proper subject for the consideration of this court (*United States* v. *St. Paul, M. & M. Ry. Co.,* 247 U. S., 310, 318, and *Duplex Printing Press Company* v. *Deering,* 254 U. S., 443, 474).

On Tuesday, May 25, 1920, the Committee on Interstate and Foreign Commerce of the House of Representatives held a hearing on the bill. Mr. Boggs, the Special Assistant to the Attorney General in charge of the bill, made a statement to the Committee concerning its several features. (See printed document, Rec., pp. 12-75). The statement covers pages 13-43 and pages 71-72, being record of hearing on H. R. 14208, Sixty-sixth Congress, Second Session. Mr. Boggs stated* that the Attorney

* He prefaced his remarks by saying:

"The next clause [in the bill] is 'and as to claimants other than citizens of the United States, unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder'" (Rec., p. 31).

This phraseology is exactly that used in sub-section (e) as afterwards enacted.

General's office was responsible for certain portions of the bill and then proceeded to explain the subsection which was afterwards designated "(e)." *He gave it the exact meaning for which we now contend, and used an illustration which is exactly like the case presented by this record.* He said:

> *"But in the case of a citizen of France or Great Britain, who has a just debt that originated with reference to the property which is over here, in other words, where a German concern had a branch house here and that branch house here created a debt which is owed to a citizen of one of these friendly nations, there would seem to be no reason in justice or good morals why that property here should not pay it subject to the limitation that it must have been a debt that accrued prior to the enactment of the trading with the enemy act"* (Rec., p. 31; [p. 20 of the House document]).

Mr. Boggs also stated that remedies to collect their debts should not be opened to "enemy creditors," and then he added:

> "Therefore, it is our opinion that debts of *non-American origin* should be collected by other means than out of this property here" (*ibid*).

Thus, the Special Assistant to the Attorney General elucidates the meaning of the words "with reference to" by describing a concrete case in all essential particulars precisely like that described in the Bill of Complaint in the case at bar; for the Deutsche Bank was a "German concern" which "had a branch

house here and that branch house here created a debt which is owed to a citizen of one of these friendly nations" (*i. e.*, the Republic of Mexico). In the case at bar, the facts had a more pronounced American aspect because the "German concern" kept money here for the purpose of paying the debt, which was payable here in gold dollars and could have been collected in the courts of this country if the property of the alien enemy had not been seized.

The case described by Mr. Boggs is that of a simple unsecured indebtedness; he makes no suggestion in his remarks that there was an intention by sub-section (e) to define cases where definite legal claims in the nature of liens or titles could be asserted.

The amended bill containing sub-section (e) was dealt with in the report (No. 1089, Sixty-sixth Congress, Second Session) of the Committee on Interstate and Foreign Commerce. That report does not contain any suggestion that Congress intended to make radical changes in the rights and remedies of friendly aliens as they had been created by the act previously in force. On the contrary, the purpose of the bill was stated to be "to facilitate the return on the part of the Alien Property Custodian" of money or property in his possession (Rec., p. 77). The radical results now claimed for sub-section (e) were not hinted at in the report or in the detailed statement in two lengthy letters (Rec., p. 79 and p. 83) of the Attorney General dated March 31, 1920,

and May 11, 1920, which were made a part of the report.*

But the report did contain the significant statement that it was not the purpose "to confiscate this property. * * * It has never been the purpose or the practice of the United States to seize the private property of a belligerent to pay our Government's claims against such belligerent. Such practice is contrary to the spirit of international law throughout the world" (Rec., p. 78).

Finally, in the annual report of the Attorney General for the year 1920 (p. 141 of the bound volume for that year) he refers to some of the changes in the law effected by the Amended Act of 1920. But he does not mention the radical result which the government now claims to have been brought about by the provisions of sub-section (e).

It cannot, of course, be claimed for the proceedings before the Congressional Committee that they

*Note: The following statements are made in the communications of the Attorney-General, viz: (1) "Sub-sections (d) and (e) contain the same general provisions relative to the effect of Section 9 which were in Section 9 as originally enacted" (Rec., p. 80); (2) "The Second paragraph of Section 9 as now in force is re-enacted as sub-section (e) of the proposed bill. The third paragraph of said section as now in force is re-enacted as sub-section (f) of the proposed bill" (Rec., p. 83) and (3) "Sub-sections (e) and (f) are contained in the act as it now exists, and no change is made in respect to them, except the prefixing of the letters which designate them" (Rec., p. 84).

The references in these quoted statements are confusing, owing probably to changes at some time of the lettering of the clauses of the bill. The fact is that that portion of sub-section (e) with which we are concerned was not contained in the original bill; it was the second paragraph of Section 9 which was re-enacted, and not as sub-section (e), but as sub-section (f) of the amended bill. The third paragraph of the section "as now in force" was re-enacted, not as sub-section (f) of the proposed bill, but as sub-section (g) of the proposed bill. Sub-section (e) as enacted in the amended bill, was entirely new, and particularly that part of it with which we are concerned.

are conclusive. But the comments of the Attorney General in the presence of the committee itself, and the fact that when those comments were made the proposed sub-section (e) was in precisely the form in which it was afterwards enacted, afford striking contemporaneous evidence of (i) the abuse which it was sought to correct, (ii) the purpose which it was sought to accomplish, and (iii) that that purpose did not require that sub-section (e) be given the meaning now contended for by the Government.

We assume that it is not necessary to make an extended argument as to the propriety of the admission of the report of the Committee and the record of the hearing at which the bill was considered. It is a part of the record before this court. It is the kind of public record or document of which the court may take judicial notice, and its reception as a part of the record of the trial was proper. (*Duplex Printing Press Co.* v. *Deering,* 254 U. S., 443, 474; *Lindsley* v. *National Carbonic Gas Company,* 220 U. S., 61, 79; *Lewis Publishing Company* v. *Morgan,* 229 U. S., 288; *Church of the Holy Trinity* v. *United States,* 143 U. S., 457, 464; *United States* v. *St. Paul, M. & M. Ry. Co.,* 247 U. S., 310, 318.)

In *Duplex Printing Press Co.* v. *Deering, supra,* the Supreme Court stated that

> "reports of committees of the House or Senate * * * may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *Binns* v. *United States,* 194 U. S., 486, 495. And this has been extended to include explanatory state-

> ments in the nature of a supplemental report made by the committee member in charge of a bill in course of passage."

See *United States* v. *Coca-Cola Co.*, 241 U. S., 265, 281, and *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S., 310, 318. The same principle applies to a sponsor of a bill who is the head of one of the governmental departments, for as was said in *United States* v. *Moore*, 95 U. S., 760, 763:

> "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. * * * The officers concerned are usually able men, and masters of the subject. Not unfrequently they are the draftsmen of the laws they are afterwards called upon to interpret."

See also, as to recommendations by the Attorney General, *Perovich* v. *Perry*, 167 Fed., 789, 791 (C. C. A., 9th Circuit); *Johnson* v. *Southern Pacific Co.*, 196 U. S., 1, 19.

The rule as to the admissibility of public documents for the consideration of the court applies in cases where an issue of law is presented on demurrer to a bill, or upon a motion to dismiss a bill, which is substantially the same thing (*Lindsley* v. *National Carbonic Gas Co., supra; Lewis Publishing Co.* v. *Morgan, supra; Church of the Holy Trinity* v. *U. S., supra; Ingersoll-Rand Co.* v. *United States Shipping Board Emergency Fleet Corporation*, 195 App. Div. [N. Y.], 838, 840).

(H) The rule requiring the strict construction of statutes authorizing suits against the United States ought not to have been applied by the Court below.

The Court below said (Rec., p. 93):

> "This is in effect a suit against the United States. The rule is well established that, when the United States permits itself to be sued in its own courts, the terms of the permission must be strictly followed, and the suitor's cause must come within the government's consent."

It is submitted that this doctrine has no application to a suit in which the United States is a mere stakeholder. The United States took no beneficial interest in seized German property. It took the property for the benefit of, or in trust for, such creditors of German citizens as should prove their claims. The real party defendant is the Deutsche Bank.

The case, therefore, becomes an apt one for the application, *mutatis mutandis,* of the principle of *United States* v. *Beebe,* 127 U. S., 338, 347, where LAMAR, J., writing for a unanimous court said:

> "We are of the opinion that when the Government is a mere formal complainant in a suit, not for the purpose of asserting any public right or protecting any public interest, title, or property, but merely to form a conduit through which one private person can conduct litigation against another private person, a court of equity will not be restrained from administering the equities existing between the real parties by any exemption of the Government designed for the protection of the rights of the United States alone."

II.

The decree of the Court of Appeals should be reversed with costs, and the cause remanded to the Supreme Court of the District of Columbia with directions to enter a decree in favor of the plaintiffs in accordance with the prayer of the Bill of Complaint.

December 3, 1923.

HENRY W. TAFT,
Counsel for Appellants-Petitioners.

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dollars on June 15, 1917. It bore interest at the rate of five per cent per annum. (R. p. 3 and 4.) The proceeds of the loan were deposited forthwith by the German Bank with the Guaranty Trust Company of New York to the credit of the general bank account which the German Bank then had with the Trust Company.

War was declared between the United States and Germany on April 6, 1917. (R. p. 4.)

Congress passed an act known as the "Trading with the Enemy Act," which was approved and went into effect October 6, 1917. (40 Stat. 411.) At some time after the passage of this act the Alien Property Custodian seized all property of the German Bank then in the United States, including the balance on deposit with the Guaranty Trust Company of New York. On May 27, 1920, the Mexican Bank made an application to the President of the United States for the payment of the debt of the German Bank to the Mexican Bank out of funds and other securities seized by the Custodian and held by the Custodian or the Treasurer of the United States. (R. p. 5.)

PROCEEDINGS IN THE LOWER COURTS.

The case was disposed of in the Supreme Court of the District of Columbia on a motion to dismiss the bill of complaint, which motion was sustained on May 25, 1922. (R. p. 85 and 86.) The motion was based upon two grounds (R. p. 8):

> (1) That plaintiffs' are claimants other than citizens of the United States, and that the

debt of which the plaintiffs are seeking to recover did not arise with reference to money or any other property held by the Alien Property Custodian or by the Treasurer of the United States, under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended.

(2) That the bill does not state a case for equitable relief under Section 9 of the Trading with the Enemy Act, as amended.

On appeal to the Court of Appeals of the District of Columbia the decree of the court below was affirmed with costs. (R. p. 94.)

The case now comes into this court on appeal from a final decree of the Court of Appeals of the District of Columbia affirming the decree of the District Court dismissing the bill of complaint. Appellants also filed a petition for a writ of certiorari to review the decision of the Court of Appeals of the District of Columbia, which petition has, by action of this court, been postponed, so that the application for the writ of certiorari and the case on appeal might be heard together.

TRADING WITH THE ENEMY ACT AND AMENDMENTS.

The statutory provisions enacted by Congress relating to the seizure, control, and disposition of enemy owned property which are pertinent to a discussion of this case are as follows:

Be it enacted * * *

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the

salary (not to exceed $5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy which may be paid, conveyed, transferred, assigned or delivered to said Custodian under the provisions of this act; and to hold, administer, and account for the same under the general direction of the President and as provided in this act. (Trading with the Enemy Act, approved October 6, 1917, 40 Stat. 411.)

If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this act. (Sec. 7, as amended November 4, 1918, 40 Stat. 1020.)

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right,

or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the

expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case my be, shall be made a party defendant), to establish the interest, right, title or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or the Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated. (As amended June 5, 1920, 41 Stat. 977.)

Subsection (e) of Section 9, as amended June 5, 1920 (41 Stat. 977), contains the language upon the construction of which the instant case depends. It is as follows:

> No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, *and as to claimants other than citizens of the United States unless it arose with reference to money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.* (Italics supplied.)

QUESTION INVOLVED.

Did the debt of appellants arise with reference to the money or other property of the German Bank in the possession of the Alien Property Custodian and Treasurer of the United States? If the debt of the appellants did not arise with reference to this specific money held by the Alien Property Custodian or the Treasurer of the United States, within the meaning of Subsection (e) supra, it is the duty of the Custodian to defend his possession until Congress determines what disposition it will make of the property.

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ARGUMENT.

No question is raised as to the power of the United States Government, acting through the Alien Property Custodian, to seize the property of the German Bank found within the borders of the United States while at war with Germany. When the funds of the German Bank on deposit with the Guaranty Trust Company of New York were seized there was nothing to indicate any connection between the property so seized and the claim of the Mexican Bank. The Guaranty Trust Company simply paid to the Alien Property Custodian the amount in its possession standing to the credit of the German Bank.

When the appellants, on May 27, 1920, made demand that the debt due the Mexican Bank be paid out of the funds and securities seized by the Alien Property Custodian it was refused because Congress had not provided for the collection of a debt out of the property of an alien enemy unless that debt arose with reference to the money or other property held by the Alien Property Custodian. There is nothing in the averments of the bill of complaint to identify any part of the property seized by the Alien Property Custodian or held by him with the debt due the Mexican Bank. On the contrary, it appears affirmatively from the bill of complaint filed by appellants that the money loaned to the German Bank was deposited to its credit in its general account months before the United States and Germany entered war. No one claims that the money loaned by the Mexican Bank December 15, 1916, and deposited by the German

Bank in the Guaranty Trust Company of New York was identified as a special deposit. The money so borrowed by the German Bank was used by it for any purpose for which need arose. No limitation was imposed upon its use. The German Bank had absolute freedom in reference to the money borrowed and was under no obligation except to repay the loan when due.

It is clear from the bill here filed that the Mexican Bank loaned $500,000 to the German Bank for six months; that the German Bank became the debtor of the Mexican Bank; that the German Bank deposited the money received from this loan in its general account in the Guaranty Trust Company, and that the Guaranty Trust Company then became the debtor of the German Bank by reason of the uncontroverted rule of law that a general deposit creates a debtor and creditor relationship. Immediately upon making this deposit the money became the property of the Guaranty Trust Company, and, in return for the money, the Guaranty Trust Company assumed the obligation to pay to the German Bank $500,000. The Guaranty Trust Company had absolute and unencumbered title to this money, and it in turn owed the debt. The Guaranty Trust Company paid to the Alien Property Custodian its own money in discharge of the obligation it owed to the German Bank.

The debt created December 15, 1916, which became due June 15, 1917, differs in no respect

from any other debt owing to and owned by friendly aliens. The fact that the United States now has in its possession money or other property belonging to the debtor is not sufficient to justify the allowance and payment of the claim of the Mexican Bank.

I.

Statutory limitations upon the right to recover a mere debt.

Under Section 9 (a), any person not an enemy or ally of enemy, to whom any debt may be owing from an enemy, may file a claim and the President may order payment to said claimant of money or other property of the debtor held by the Alien Property Custodian; and a claimant may also institute a suit in equity to establish a debt so claimed, which, if established, the court is required to order paid from money or other property of the debtor held by the Custodian. Under the general language of this section of the amendment of June 5, 1920, any person not an enemy might enforce the payment of a debt from the property of the debtor in the possession of the Custodian.

Congress, however, by Subsection (e) of the amendment of June 5, 1920, placed a limitation upon the right to recover a mere debt, limiting that right to citizens of the United States, unless the debt "arose with reference to the money or other property held by the Alien Property Custodian." Subsection (a) is an enabling act granting certain remedies to certain parties, while Subsection (e) is

a limitation and restriction designed to cut down the provisions of Subsection (a). The contention of counsel for appellants that Subsection (e) is a mere duplication of the remedy provided for in Subsection (a) ought not to be sustained. Subsection (e) does not provide any remedy. It simply limits and restricts the remedy already provided by Subsection (a). Congress had the power to withhold from creditors not citizens of the United States the general right to recover payment of debts due such creditors from property of enemy debtors which had been legally seized.

It is neither unusual nor absurd for a sovereignty to give its own citizens rights and privileges which are denied to foreigners. The United States had the right to take the money of the Mexican Bank and it has the right to say when and by whom, if at all, such money may be resorted to for the payment of debts owed by the alien enemy whose property has been seized.

II.

The Remedy by attachment under the New York Statute does not bring the claim within the provisions of Subsection (e), Section 9, of the Act of June 5, 1920.

The appellants set forth in Paragraph 16 of the bill (R. p. 6) the fact that under the laws of the State of New York the funds and securities of the German Bank are subject to attachment and can be levied upon and seized and applied in satisfaction of a judgment in favor of the Mexican Bank for said loan and

interest and that appellants now have a cause of action against the German Bank on which they can now sue in the courts of general jurisdiction in the State of New York for the recovery of said debt and interest. They rely upon these facts to establish the debt due the Mexican Bank as one which arose with reference to the money held by the Alien Property Custodian.

The laws of New York providing for the recovery of a judgment and the collection thereof do not in any way tend to identify the debt with the property out of which satisfaction of a judgment may be enforced. Every creditor has the same remedy under these statutes, whether his debt arose with reference to the money out of which satisfaction is to be had or not. The limitation of said Subsection (e) placed upon claimants other than citizens of the United States would have no effect whatever if this contention with reference to the New York statutes should be sustained.

This Act of Congress was not intended to deprive creditors of their remedies for the collection of debts under the State and Federal statutes, but the right of a sovereign while at war to seize and hold the property of its enemies is not affected or diminished by the fact that such enemies may have foreign nonenemy creditors. There was no more disturbance of property rights and existing remedies than was incident to the state of war which made proper the enactment of the original statute approved October 6,

1917, providing for the seizure of enemy-owned property.

Congress intended to exclude foreign creditors from asserting claims against money or property in the hands of the Custodian unless they could assert an interest, right, or title therein, or unless the debts sought to be satisfied arose with reference to money or other property held by the Custodian. This is a plain case of debtor and creditor between the German and Mexican Banks. The transaction has left no earmarks on any money or property in the possession of the Custodian. The limitation contained in Subsection (e) operates to deprive appellants of any right of action. The right of the United States to retain this property seized from an alien enemy is superior to any rights of creditors of that enemy.

III.

No policy of the United States to confiscate property of the enemy is involved.

Congress has not yet determined what shall be done with property of the enemy seized during the war. It is sufficient for the Alien Property Custodian to say that the property of enemies having been rightfully seized, it is his duty to hold it until Congress shall clearly direct when and to whom such property may be lawfully returned. The plaintiffs' case must come within the Act of Congress permitting suit to be brought against the Government. While Congress has never indicated an intention to confiscate the property of former enemies now in the

hands of the Alien Property Custodian, it has not, on the other hand, provided for the general return of such property.

IV.

Legislative history of Act of June 5, 1920.

The legislative history of the Act of June 5, 1920, need not be looked to to ascertain the legislative intent in this case, because the meaning of the statute is not obscure. The debt, under the language used by Congress, must have had some reference to the money or property held by the Custodian. In the present case it had none. Not a single fact distinguishes this debt from any other ordinary debt. The money was borrowed December 15, 1916, for six months. It became due June 15, 1917. No one had interfered in any way with the custody or use of the money. The property of the debtor was not seized by the United States until long after the debt became due. It is inconceivable that the German Bank borrowed the money and left it on deposit with the Guaranty Trust Company for the sole purpose of using it to pay the debt when due.

AUTHORITIES RELIED UPON.

The power of Congress to say when and by whom enemy property seized by the United States may be resorted to for the payment of debts owed by alien enemies was upheld in the case of *Nortz* v. *Miller and Seeliger* (opinion by Judge Knox in the District Court of the United States for the Southern District

of New York in December, 1921, 285 Fed. 778; affirmed 285 Fed. 781).

The language of Subsection (e) of Section 9 of the Amendment of June 5, 1920, was there under consideration.

The specific provisions of Subsection (e) must be given effect over the general provisions of Subsection (a) of the amendment.

Peck v. *Jenness*, 7 Howard, 612, 622.
Townsend v. *Little*, 109 U. S. 504.

The relation which exists between the Guaranty Trust Company and a general depositor like the German Bank is that of debtor and creditor.

Marine Bank v. *Fulton Bank*, 2 Wall. 252.
Thompson v. *Riggs*, 5 Wall. 663.
Bank of Republic v. *Millard*, 10 Wall. 152, 155.
Perry on Trusts, Fifth Ed. Sec. 128.
Story's Equity Jurisprudence, Sec. 1259.

Mr. Justice Miller, in *Marine Bank* v. *Fulton*, supra, at page 256, said:

> All deposits made with bankers may be divided into two classes, namely, those in which the bank becomes bailee of the depositor, the title to the thing deposited remaining with the latter; and that other kind of deposit of money peculiar to banking business, in which the depositor, for his own convenience, parts with the title to his money, and loans it to the banker; and the latter in consideration of the loan of the money and the right to use it for his own profit, agrees

to refund the same amount, or any part thereof, on demand.

When the money of the German Bank was received by the Guaranty Trust Company, its identity as a fund was lost. It became a part of the general mass of property of the Trust Company and the only relation between the Guaranty Trust Company and the Mexican Bank thereafter was that of debtor and creditor. (*School Trustees* v. *Kirwin*, 25 Ill. 77.)

CONCLUSION.

The case is summarized in the opinion of the Court of Appeals in two paragraphs which read as follows (289 Fed. 924, 926, 927):

> It is clear from the averments of the bill that when the loan was made the German bank became the debtor of plaintiffs, and when the German bank in turn deposited the proceeds of the loan with the Guaranty Trust Company the company became the debtor of the German bank, hence, in each transaction the relation of debtor and creditor was established. It must also be conceded that the Mexican bank, the plaintiff in interest, is not a citizen of the United States. The case, therefore, turns upon the single proposition whether the debt arose with reference to the money or property seized by the Alien Property Custodian.
>
> There is nothing to indicate that the contract between the two banks placed any limitation upon the disposition which the German bank might make of the borrowed

> money after it was delivered to it. It was free to send the money out of the country, to deposit it to its credit in a bank, as was done, or use it in any manner that it might see fit. The transaction imposed no duty upon the German bank either contractual, moral, or by commercial custom, except to repay the loan when due according to its terms.

The appellants who are not citizens of the United States are not entitled to recover their debt out of the funds in the hands of the Alien Property Custodian because that debt did not arise with reference to any money held by the Alien Property Custodian or the Treasurer of the United States.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.
AUGUSTUS T. SEYMOUR,
Assistant to the Attorney General.

DECEMBER, 1923.

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BANCO MEXICANO DE COMMERCIO E INDUSTRIA ET AL. *v.* DEUTSCHE BANK; MILLER, ALIEN PROPERTY CUSTODIAN, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 361. Argued January 9, 1924.—Decided January 21, 1924.

1. A suit in equity brought under § 9 of the Trading with the Enemy Act, against the Alien Property Custodian, the Treasurer of the United States and a foreign corporation, to establish a debt of the corporation to the plaintiff, as a claim against its property seized under the act and held by the Custodian and the Treasurer, is in effect a suit against the United States, and can therefore be maintained only under the conditions laid down in the act. P. 603.
2. Where money was lent by liquidators of a Mexican bank, at New York, to a German bank, and deposited by the borrower to its general credit with a trust company in that city, and, after the outbreak of the late war, before the loan fell due, the deposit with other assets of the borrower was taken over by the Alien Property Custodian, *held*, that suit to collect the loan could not be maintained by the Mexican bank under the above statute, since the debt was not one that "arose with reference to the money or other property held." P. 599.
3. The fact that, under the law of New York, the debt, when due, might have been collected by attachment of the property, had this not been seized under the statute, did not alter the case. P. 602.
4. Legislative history of this statute, including remarks of a congressman explaining the bill, *held* not to determine its construction. P. 601.

289 Fed. 924, affirmed.

APPEAL from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of the District, which, on motion, dismissed the bill in a suit to enforce a claim under the Trading with the Enemy Act.

Mr. Henry W. Taft for appellants.

In no sense, either etymologically or grammatically, does the description that a debt "arose with reference to the money or other property," convey the idea of a definite legal relation, recognized in our system of law, of the debt to the "money or other property." The words are merely those of general description. If it had been intended to connote accepted legal concepts, appropriate language could easily have been selected. In a colloquial, business, etymological and grammatical sense, there are many cases where it may with accuracy be said that a debt has been incurred with reference to certain money or property, as, for instance, where by the ordinary processes of the courts the indebtedness could be collected out of such money or property belonging to the debtor. With equal accuracy the same language might be applied to a case where the creditor expected that a debt would, in the ordinary and current course of business, be paid out of money or property which was being employed in the business in connection with which the debt was incurred, and where the creditor relied on the continuing availability of such money or property as the basis of the credit. In other words, it is reasonable to look upon "with reference to" as equivalent to "with an eye toward."

The existing if incohoate right of the Banco Mexicano to sue upon the debt of the Deutsche Bank in the courts of the State of New York, where the loan was made and was payable, was a potential or executory remedy which needed only the presence in that jurisdiction of property belonging to the Deutsche Bank, to convert it into an effective legal security; and such security was actually available. It is not a violent assumption that it was the very existence of the money and property in this country, and, therefore, the likelihood of the payment of the debt, that were the inducements for the loan and

created the credit of the Deutsche Bank on which the Banco Mexicano relied. In a very practical sense, under the foregoing circumstances, therefore, the debt was incurred with reference to the money or property of the Deutsche Bank which came into the hands of the Custodian.

The Government is practically forced into the position of claiming that debts do not arise "with reference to the money or other property" except (i) where proceeds of a sale can be traced into the property, or (ii) where a contract for the purchase or sale of specific property has been made and there can be some remedy for compelling its delivery, as in a suit for specific performance, or (iii) where there is some kind of specific lien, legal or equitable, upon the property, or (iv) where title is based on physical identity and there may be recovery of possession as, for instance, by writ of replevin. But it is obvious that if the debt referred to in sub-section (e) of § 9 is confined to such cases, an intention must be attributed to Congress to destroy existing remedies under laws of the several States, where the property could, before the act, have been reached in their courts in satisfaction of the debt upon judgment and execution. Such a purpose would be inconsistent with the liberal policy inaugurated by the general provisions of the original act as amended in 1919. 41 Stat. 35.

In the absence of some purpose clearly appearing from the language of the act itself or from its legislative history, there is a strong presumption that Congress did not intend by using such ambiguous language, not only completely to reverse the liberal policy of the earlier act, but also to deprive creditors of the remedies which they would otherwise have had for the collection of their debts in both the state and the federal courts. See *Kohn* v. *Kohn, Inc.*, 264 Fed. 253, 255; *Fischer* v. *Palmer*, 259 Fed. 355. By sub-section (f) of § 9 of the act, property in the hands of

the Custodian was to continue to be free from "lien, attachment, garnishment, trustee process, or execution," and was not to be subject to "any order or decree of any court." 41 Stat. 980. Unless sub-section (e) is interpreted in accordance with our contention, the prohibition of subsection (f) results in what is in the nature of confiscation, and that is to be avoided. If, however, the elastic language of sub-section (e) is interpreted so as to extend to the allowance of claims which could, except for the passage of the act, have been prosecuted to judgment in the courts of one of the States and have been satisfied out of the property found in such State, we avoid a violent disturbance of property rights and existing remedies, and there would be excluded from the benefit of the act only those persons having no business or residence connection with this country and possessing no specific claim to or lien upon the money or property in the hands of the Custodian.

The intention of Congress was to embrace by the provisions of subsection (e) cases other than those where there was a definite legal "interest, right, or title" in the seized property. Both the counsel for the Government and the Court of Appeals have felt the pressure of this canon of interpretation, but in attempting to meet its requirements they find themselves logically forced to maintain that a debt which "arose with reference to the money or other property" must have been a debt which was related to such money or property in such a way that it could be satisfied by pursuing a right in the nature of a right *in rem* to, or a lien upon, the seized property.

In any conceivable case where a remedy exists either in law or in equity, to proceed against and secure possession of the money or property itself, it has been provided for in the first part of sub-section (a), which permits a person "claiming any interest, right, or title in" the seized property to maintain a suit in equity for its re-

covery. How can it be reasonably said that by sub-section (e) Congress intended to limit cases where debts could be collected out of the seized property to those where under sub-section (a) such property could have been resorted to?

Sub-section (e) vested in a court of equity the power to determine in each case whether a debt "arose with reference to the money or other property held by the Alien Property Custodian."

The statute should be interpreted so as to avoid the destruction of neutral rights and remedies, and a contravention of international law.

Our view of the proper interpretation of sub-section (e) is confirmed by the legislative history of the bill which became the amending Act of June 5, 1920. This history is a proper subject for the consideration of this Court.

The rule requiring the strict construction of statutes authorizing suits against the United States ought not to have been applied by the court below. The real party defendant is the Deutsche Bank. *United States* v. *Beebe*, 127 U. S. 338, 347.

Mr. Assistant to the Attorney General Seymour, with whom *Mr. Solicitor General Beck* was on the brief, for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Appeal from the decree of the Court of Appeals affirming the decree of the Supreme Court of the District of Columbia which dismissed the suit of appellants, brought in the latter court by them under the Act of Congress of October 6, 1917, entitled, "An Act To define, regulate, and punish trading with the enemy, and for other purposes," as amended June 5, 1920. 40 Stat. 411; 41 Stat. 977.

The Deutsche Bank of Berlin was duly appointed liquidator of the Banco Mexicano, a banking corporation

organized under the laws of Mexico, and authorized to act in the process of liquidation through Elias S. A. De Lima and Carlos Schulze as the representatives of the Banco Mexicano. Upon their appointment they proceeded with the liquidation of the affairs of the bank.

By virtue of their appointment and during the period they were acting as such liquidators, they were authorized to make loans of the assets of the bank for its account and to collect and, if necessary, to sue for and collect upon the claim which is the subject of this action.

They as liquidators for and on behalf of the Banco Mexicano made a loan of 500,000 gold dollars in New York City on December 15, 1916, to the Deutsche Bank of Berlin, a banking corporation existing under the laws of the German Empire, for six months with interest at the rate of 5% per annum.

The amount was paid to Hugo Schmidt, the agent of the latter bank at its place of business in the United States, and the bank agreed to repay the same in that city on June 15, 1917, with interest at the rate above mentioned.

Upon receiving that amount, represented by check, the bank forthwith deposited the same with the Guaranty Trust Company of New York to the credit of its general bank account which it then had with that institution.

On April 6, 1917, war was declared between the United States and Germany. Thereafter, as the appellants are informed and believe, under the provisions of the Trading with the Enemy Act and other statutes in such case made and provided, all moneys, securities and property owned by the Deutsche Bank in the United States or held for it by others were turned over to or seized by the Alien Property Custodian of the United States and have ever since been held by him.

It is averred, on information and belief, that the money so loaned was never transferred from the United States physically or otherwise, but constituted a part of the bal-

ance of the general deposits and securities and other property in the United States of the bank which were taken over and seized by the Alien Property Custodian. The total amount of such balance and the total value of the securities and property, are unknown to appellants but are sufficient, as they are informed and believe, after the payment and satisfaction of all other claims and demands, fully to pay, satisfy and discharge the claim and demand of the appellants arising upon the loan.

After the loan was made and until its balance, securities and other property were turned over to the Alien Property Custodian, the Deutsche Bank continuously kept in the United States sufficient funds and property over and above what was necessary to pay and discharge all other claims and demands of every kind, to repay the loan with interest, and the funds and securities were kept in the United States for the express purpose and with the intention by the use thereof of repaying the loan when it fell due. And the bank would have, in the ordinary and usual course of business, repaid the same when the debt fell due, if war had not intervened between the United States and Germany.

On June 15, 1917, there became due to appellants from the Deutsche Bank, the amount of the loan; and it is still due, although they have made demands for the payment thereof upon the bank and the Alien Property Custodian.

In pursuance of § 9 of the Trading with the Enemy Act, the appellants as liquidators and in behalf of the Banco Mexicano, on or about May 27, 1920, filed with the Alien Property Custodian a notice of claim, under oath, and in such form and containing such particulars as was required by that section and as the Custodian had prescribed, demanding payment of the debt above described, with interest thereon then accrued, by the Custodian, from the money or other property belonging to the bank, or held by him or by the Treasurer of the United States.

On or about the same day a similar application was filed with the President of the United States. Neither the President nor the Alien Property Custodian has paid the debt or the interest thereon.

Appellants aver that since December 15, 1916, the Deutsche Bank kept in the United States sufficient cash and marketable securities over and above its obligations to enable it to pay the loan and interest, and that the Alien Property Custodian and Treasurer of the United States now hold sufficient cash and securities formerly owned by the bank and seized by the Custodian over and above all claims against the same to pay the debt with interest.

Appellants are advised and believe that under the law of New York State, and in the event of default by the Deutsche Bank in the payment of the loan, they would have had, on June 15, 1917, and ever since, and now have, a cause of action against the bank upon which they could have sued and can now sue, and could have procured, and can now procure, the issue of a writ of attachment under which the funds and securities of the bank in New York City could have been, and now can be, levied upon and seized and applied in satisfaction of a judgment obtained.

It is averred that by reason of the foregoing facts the debt of the appellants arose with reference to the money and other property within the meaning and intention of subdivision (e) of § 9 of the "Trading with the Enemy Act".

A motion to dismiss the bill of appellants was made, the grounds thereof being: (1) appellants are claimants other than citizens of the United States, and that the debt which they are seeking to recover did not arise with reference to money or any other property held by the Alien Property Custodian or the Treasurer of the United States under and pursuant to the terms and provisions of the Trading with the Enemy Act, as amended.

(2) The appellants have not set forth facts sufficient to entitle them to equitable relief under § 9 of the Trading with the Enemy Act, as amended.

The motion was granted and a decree made and entered dismissing the bill.

Upon the appeal of appellants the decree was affirmed by the Court of Appeals of the District of Columbia, to review which action this appeal is prosecuted.

The case is in narrow compass. The facts are set forth in the bill; the law adduced, that is, § 9 as amended, it is contended, constitutes them grounds of recovery prayed for and demonstrates the error in the decree appealed from. We quote it although its pertinent and determining words are few. As passed October 6, 1917, it is as follows:

"That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided,*

That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, . . . to establish the interest, right, title, or debt so claimed."

The amendment of June 5, 1920, is as follows: "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder." [§ 9(e)].

The amendment provides that: "Nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and *as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.*"

The italics are ours and mark the words which make the controversy. The Court of Appeals regarded them a limitation upon the generality of the section as originally en-

acted—an exception from its indulgence of claimants other than citizens of the United States unless the debt arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States under the act.

We concur. The condition did not exist in the claimant. The debt did not arise with reference to the money or property held. The transaction was an ordinary business one—money borrowed to be repaid at a specified distant date, a deposit of it in the ordinary way and with the legal result and relation—the creation of debtor and creditor—not a word or act else—not a word or act else giving the transaction other character or quality. No distinction, indeed, from any other transaction, nothing to give specification to it or particular remedy.

But particularity is not necessary, is the contention. Mere trace of a relation seems, in counsel's view, to satisfy the requirement of § 9. The definition of the Standard dictionary is adduced, and from it, it is said, it is reasonable to look upon "with reference to" as equivalent to "with an eye toward." To give this pertinence, necessarily, the eye must see what the statute requires to be seen—a debt that had fixed some right or title or equity to the money or other property held by the Alien Property Custodian or by the Treasurer of the United States.

In support of counsel's view, the explanation of the amendment by the congressman in charge of it is quoted as giving a remedy to a just "debt owed to a citizen of a friendly nation, that originated with reference to the property which is over here." And further "there would seem to be no reason in justice or good morals why that property here should not pay it subject to the limitation that it must have been a debt that accrued prior to the enactment of the Trading with the Enemy Act." This is given emphasis of meaning by the contrast of claims of "enemy

creditors" which it was declared "should be collected by other means than out of this property here." The views of the Attorney General were also referred to and the absence of any recommendation by the Committee on Interstate and Foreign Commerce of an intention "to make radical changes in the rights and remedies of friendly aliens as they had been created by the act previously in force."

It may be conceded that there is some suggestive strength in this history, but it is to be remembered that an act of legislation is not the act of one legislator, and its meaning and purpose must be expressed in words. If there be ambiguity in them it is the office of construction to resolve it. This we think the Court of Appeals exercised, and to a right conclusion.

A contention, or rather the support of the main contention, is made by appellants by reference to the New York statutory law which authorized, it is said, an action against a foreign corporation—in this case by the Banco Mexicano against the Deutsche Bank—for the collection of its note, a writ of attachment and a judgment that could be satisfied out of the property attached. And the further contention is that by § 9, as amended, "non-resident alien individuals and corporations were accorded broader rights even than they then enjoyed under the laws of New York, in that they could collect their indebtedness out of the property of non-resident alien enemies in the hands of the Custodian, wherever and however it arose, and whatever its nature." But this is a conclusion deduced from the construction put upon § 9 which we think is untenable.

We repeat, we do not think that the debt arose with reference to the money or other property held by the Alien Property Custodian.

Therefore, the prayer of the bill of complaint should be denied. We are constrained to this because we agree with

the Court of Appeals that this suit is in effect a suit against the United States and all of its conditions must obtain.

Decree affirmed.

The CHIEF JUSTICE took no part in the consideration or decision of the case.

UNITED STATES v. INTERSTATE COMMERCE